

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 2738 OF 2019
IN
FIRST APPEAL NO. 423 OF 2003**

Mumbai Metropolitan Region Development
Authority, Bandra, Mumbai Applicant

In the matter between :-

Nirmala Ramdas Pandey and ors. Appellants
v/s.
Kanaiyalal Purushottam Shah and Ors. Respondents

WITH

**INTERIM APPLICATION NO. 2821 OF 2021
IN
FIRST APPEAL NO. 423 OF 2003**

Kanhaiyalal Purshottamdas Shah
and ors. Applicants

In the matter between :-

Nirmala Ramdas Pandey and ors. Appellants
v/s.
Mumbai Metropolitan Region Development
Authority, Bandra and ors. Respondents

Mr. S.N. Vaishnav with Ms. N.J. Mukherjee and Mr. Vipul Shukla for the
Applicants in IA/2821/2021 and for the Respondent Nos.1,2,4,7,8 and 11 in
IA/2738/2019.

Mr. Saket Mone a/w. Mr. Devansh Shah and Ms. Srushti Thorat i/b. M/s.
Vidhi Partners for Respondent No.1 – MMRDA and for the Applicants in IA/
2738/2019 and for the Respondents in IA/2821/2021 .

Mr. A.R. Patil, AGP for the State.

Mr. S.K. Dhekale, Court Receiver, High Court, Bombay.

Digitally
signed by
PRASANNA
PRADEEP
SALGAONKAR
Date:
2024.01.15
10:45:15
+0530

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 8th JANUARY, 2024.**

P. C. :-

. By this Order, I propose to dispose of :-

(i) Interim Application No.2738/2019 filed by the MMRDA in a disposed of First Appeal No.423/2003 seeking discharge of Court Receiver in respect of land admeasuring 62.39 sq. meters bearing CTS No.458 (part), land admeasuring 738.18 sq. meters bearing CTS No.442/A/3/E of Village Pahadi, Goregaon and ;

(ii) Interim Application No.2821/2021 filed by the Respondent in the said Appeal seeking (a) payment of Rs.1,34,72,400/- being part of the amount deposited by MMRDA with the Court Receiver, pursuant to the order dated 10/02/2020 along with accrued interest thereon, (b) Interest @ 17% p.a. on an amount of Rs.1,34,72,400/- from 17/02/2020 till the date of payment, (c) directions against MMRDA to pay the balance amount of Rs.23,80,042/- payable as per order dated 10/02/2020 with interest @ 18% p.a. till the date of payment.

2. The brief facts necessary to decide these Applications are as under :-

3. The Applicants – Kanhayalal Shah and others (Respondent Nos.1 to 11 in First Appeal No.423/2003) had filed Civil Suit No.1173/1971 for declaration and permanent injunction alleging that the Defendants- Dayashankar Mishra and Tarachand Mishra (Respondent Nos.12 and 13 in

First Appeal No.423/2003) had encroached on the portion of the suit property admeasuring 28427.40 sq.meters surveyed under Old Survey Nos.92, Hissa No.4(part), 118 Hissa No.(part) and 120 Hissa Nos.3, 4 and 5 of village Pahadi, Borivali, Greater Bombay. During the pendency of the suit, the Court Receiver was appointed, who was directed to take symbolic possession of the encroached portion of the suit property. Later, by judgment dated 15/04/1997, the said suit came to be decreed in favour of the Applicants/Plaintiffs. The said judgment has been confirmed by this Court as well as by the Hon'ble Supreme Court.

4. The Applicants/Plaintiffs sought to execute the decree by filing Execution Application No.102/1999 and filed Chamber Summons No.397/1999 seeking directions to the Receiver to take physical possession of the encroached land. The tenants/occupants of the structures in the suit property filed Chamber Summons No.137/2001 claiming independent right in the subject premises and opposed execution of the decree.

5. The chamber summons filed by the tenants/occupants came to be dismissed vide order dated 16/07/2002. Being aggrieved by the said order, the tenants/occupants filed an Appeal being First Appeal No.423/2003 which came to be dismissed on 26/11/2018 for want of prosecution under Order 41 Rule 17 of CPC. While dismissing the said Appeal, this Court directed the Court Receiver to take physical possession of the suit property and handover the same to the Applicants/Plaintiffs in accordance with law.

6. The judgment and decree dated 15/04/1997 having attained finality and the appeal against the dismissal of chamber summons filed by the obstructionist having been dismissed, the Applicants/Plaintiffs were entitled for possession of the suit property. However, the records indicate that MMRDA, who was not a party to the appeal, filed an Interim Application No.2738/2019 in a disposed of appeal contending that the land admeasuring 62.39 sq. meters from CTS No.458 (part) (Old Survey No.120/5) and land admeasuring 738.18 sq. meters from CTS No.442/A/3/E (Old Survey No.120/3) of Village Pahadi, has been acquired vide order dated 23/08/2019. The MMRDA sought discharge of the court receiver in respect of the said land.

7. On 29/01/2020, in the course of the hearing, learned counsel for the MMRDA and the Applicants/Original Plaintiffs made a statement that the portion of the acquired land, which was the subject matter of the Interim Application could be demarcated in presence of the parties and the Court Receiver. Accordingly, this Court by order dated 29/01/2020, directed the Surveyor from the office of the MMRDA to carry out physical demarcation in presence of the parties and directed the Court Receiver to submit a report. Pursuant to the said order, the Court Receiver submitted the report dated 04/02/2020 stating that the property was measured and demarcated in presence of the parties.

8. Pallavi Tabhane, working as Tahsildar and authorized signatory of MMRDA filed her affidavit stating that the acquired land was demarcated and as per the demarcation, an area admeasuring 594 sq. meters was acquired from CTS NO. 442/A/3/1/E and an area of 46.25 sq. mts was acquired from CTS No.458. She has stated that portion of land admeasuring 136.25 sq. mts from CTS No. 442/A/3/1/E which is also required for the project was already acquired by PWD for the purpose of construction of Western Express highway vide award dated 05.11.1963, and that an amount of Rs.614.57 was already paid to Ishwarbhai B. Patel, the owner of the said acquired portion of the land.

9. The records, particularly the Order dt.10.02.2020 reveals that the learned counsel for MMRDA had made a statement that an amount of Rs.6,33,07,920/- would be paid to the Applicants/Plaintiffs without prejudice to its rights and contention for seeking possession of the acquired land admeasuring 594 sq. meters of plot bearing No.442/A/3/1/E and 46.25 sq. meters of land from plot no.458 (part). Learned counsel for the MMRDA further stated that an area admeasuring 136.25 sq. meters from Plot No.442/A/3/1/E was already acquired by the State Government. The MMRDA sought possession of the said portion of the land and made a statement that it is willing to deposit an amount of Rs.1,58,52,442/- in respect of the said land, though it is not liable to pay the said amount. It was stated that the MMRDA would approach the State Government in respect of the said payment.

10. In view of the said statement, this Court directed the MMRDA to release an amount of Rs.6,33,07,920/- in favour of the Applicants/plaintiffs with further directions to MMRDA to deposit an amount of Rs.1,58,52,442/- without prejudice to the rights and contentions of both the parties. This Court directed that upon receipt of payment of Rs.6,33,07,920/-, the Court Receiver shall stand discharged in respect of the land admeasuring 594 sq. meters from CTS No. 442/A/3/1/E and 46.25 sq. meters from CTS No.458 (part), and directed the Receiver to hand over possession of the said land to MMRDA as per demarcation at site. It was stated that in view of the above, the Applicants/plaintiffs would not challenge validity of the Award.

11. As regards area admeasuring 136.25 sq. meters from CTS No.442/A/3/1/E, the Court directed that the Court Receiver shall stand discharged in respect of the said area upon deposit of Rs.1,58,52,442/- in the Court. Liberty was granted to the Applicants/plaintiffs to apply for withdrawal of the said amount. The parties were put to notice that the request for withdrawal of the amount would be considered after hearing the counsel for the parties and the State Government.

12. Pursuant to the said order, the MMRDA paid to the Applicants/plaintiffs an amount of Rs.6,33,07,920/- and MMRDA has been put in possession of land admeasuring 594 sq. meters from CTS No. 442/A/3/1/E and 46.25 sq. meters from CTS No.458 (part), and the Court

Receiver has been discharged in respect of the said land.

13. The Applicants/plaintiffs filed the application (IA No. 2821 of 2021) raising a grievance that instead of depositing an amount of Rs.1,58,52,442/-, the MMRDA had deposited only an amount of Rs.1,34,72,400/- in respect of the area admeasuring 136.25 sq. meters from CTS No.442/A/3/1/E. The Applicants/plaintiffs further contended that the State Government had not raised any claim in respect of the said land and hence claimed that they are entitled to withdraw the amount of Rs.1,34,72,400/- and sought further reliefs as stated above.

14. Mr. Sameer Kurtkoti, the Additional Collector – 1, Metro filed his additional affidavit that the Award dated 23/08/2019 was in respect of the total area admeasuring 800.57 sq. meters i.e., land admeasuring 738.18 sq. meters from land bearing CTS No.442/A/3/1/E and land admeasuring 62.38 sq. meters from CTS No.458 and the total compensation in respect of the said land was fixed at Rs.7,91,60,362/-. He has stated that the demarcation carried out as per the order of the Court revealed that the actual land required for the said project was 640.25 sq. meters i.e., an area of 594 sq. meters from CTS No.442/A/3/1/E and 46.25 sq. meters from CTS No.458 and that the compensation payable in respect of the said land was Rs.6,33,07,920/-.

15. The Additional Collector has further stated that the actual amount payable in respect of the said area was Rs.1,34,72,400/- and not

Rs.1,58,52,442/- as erroneously stated before the Court on 10/02/2020. He has stated that land admeasuring 136.25 sq. mts from CTS No.442/A/3/1/E was already acquired by the PWD Department for the purpose of construction of Western Express Highway, and hence the Applicants/plaintiffs are not entitled to receive the said amount.

16. There is no dispute about the area of the land acquired by the MMRDA. It is also not in dispute that the MMRDA has already paid to the Applicants/plaintiffs an amount of Rs.6,33,07,920/- in respect of land admeasuring 62.39 sq. meters from CTS No.458 Part and 738.18 sq. meters from CTS No.442 A/3/1/E and the Receiver has already handed over possession of the said land to the MMRDA and the Receiver has been discharged in respect of the said land.

17. The dispute is relating to payment of compensation in respect of land admeasuring 136 sq. mtrs from CTS No. 442/A/3/1/E. The MMRDA has questioned the entitlement of the Applicants/plaintiffs to receive compensation in respect of the said portion of the land on the ground that the said land was already acquired by the Government. The State Government had not claimed right in respect of the said land at any point of time. As noted above, the suit was decreed in favour of the Applicants/plaintiffs and by order dated 26/11/2018 in First Appeal No.423 of 2003, the Court Receiver was directed to handover physical possession of the suit property to the Applicants/plaintiffs. The Applicants/plaintiffs were therefore entitled for

possession of the suit property including the said portion of land admeasuring 136.25 sq. mtrs. It was only in view of the application filed by the MMRDA that this Court with consent of the parties had directed demarcation of the land acquired by MMRDA and despite order dated 26.11.2018 this Court directed the Court Receiver to put MMRDA in possession of land admeasuring 136.25 sq. mtrs., on deposit of compensation before the Court. Pursuant to the said order, the Court Receiver has put MMRDA in possession of the said portion of land, and stands discharged in respect of the said land. In such circumstances, having taken possession of the land admeasuring 136.25 sq. mtrs from the Court Receiver, the MMRDA cannot be prima facie absolved of its liability to pay the compensation to the Applicants/plaintiffs in respect of the said land.

18. The issues raised by the MMRDA as well as by the State Government in Interim Application No.1 of 2019 have absolutely no nexus with the issues involved in the appeal and cannot be adjudicated in this interim application filed in a disposed of appeal. As regards the claim of the Applicants/plaintiffs for the balance amount of Rs.23,80,042/-, the MMRDA has explained that the actual amount payable towards the area of 136.25 sq mtrs. is 1,34,72,400/- and that the statement that the amount of Rs. 1,58,52,448/- would be deposited was made in view of erroneous calculation. Needless to state that it is not within the domain of this Court to decide whether the MMRDA is liable to pay the balance amount of Rs.23,80,042/-, or whether the Applicants/Plaintiffs are entitled for any interest on the amount of

Rs.1,34,72,400/- or the balance amount of Rs.23,80,042/-. The issues raised by the MMRDA/ State Government as well as by the Applicants/plaintiffs need to be adjudicated in appropriate proceedings and not in these interim applications filed in a disposed of appeal.

19. Under the circumstances, the Court Receiver is directed to pay to the Applicants/plaintiffs an amount of Rs.1,34,72,400/- with interest accrued thereon. All the points and contentions relating to previous acquisition of the land by the State Government as well as entitlement of the Applicants/plaintiffs for additional amount of Rs.23,80,040/- and interest as prayed are specifically kept open with liberty to the State Government/ MMRDA and the Applicants/plaintiffs to raise the said issues in any other appropriate proceedings. Payment/ receipt of Rs.1,34,72,400/- shall be subject to the order passed, if any, in such proceedings.

20. Both the applications stand disposed of in above terms.

21. Learned Counsel for the MMRDA seeks stay of six weeks to enable them to challenge the order before the Hon'ble Supreme Court. The Receiver to defer payment of the amount of Rs.1,34,72,400/- for a period of six weeks.

(SMT. ANUJA PRABHUDESSAI, J.)