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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8531 OF 2014**

M/s. Siddhivinayak Infrastructures	... Petitioners
Vs.	
The City and Industrial Development Corporation of Maharashtra Ltd. And Ors.	... Respondents

Mr. R.D. Soni i/by M/s. Ram and Company, for the Petitioners.
Mr. B.B. Sharma, for the Respondent Nos.1 to 6.
Mr. V.S. Gokhale, AGP, for Respondent No.7.

**CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.**

DATE : 21st JULY, 2015

PC.

. Heard the learned counsel appearing for the Petitioners.

One Krishna Gana Kamble and three others were original allottees of Plot No.A-21 in Sector 16 of village Ulve in Navi Mumbai. The said plot was allotted to them on lease under 12.5% Scheme (erstwhile Gaothan Expansion Scheme). An agreement to lease was executed by the City and Industrial Development Corporation Limited (for short "CIDCO") on 23rd August, 2011 in which the said Krishna and three others were shown as the licensees. The schedule describing the area and boundaries of Plot No.A-21 is a part of the said agreement. On 8th August, 2011, there is a possession receipt executed by the said Krishna

and three others in favour of the CIDCO in respect of the said plot No.A-21. The said Krishna and three others made an application on 22nd September, 2011 to the CIDCO for grant of permission to transfer the said plot. On the basis of the permission granted by the CIDCO, a tripartite agreement was executed by and between the said Krishna and three others, the CIDCO and M/s. Arihant Enterprises. On an application made by M/s. Arihant Enterprises on 27th December, 2011, the CIDCO granted permission to M/s. Arihant Enterprises to transfer the said plot to the Petitioners. On the basis of the said permission, a tripartite agreement dated 30th December, 2011 was executed by and between the CIDCO, M/s. Arihant Enterprises and the Petitioners under which the CIDCO agreed to grant lease in respect of the said plot to the Petitioners.

2. The grievance in this Petition is that notwithstanding execution of the said tripartite agreement dated 30th December, 2011, the CIDCO has not handed over the possession of the said plot to the Petitioners. The learned counsel appearing for the Petitioners invited our attention to the correspondence made by the Petitioners from time to time from the date of the execution of the tripartite agreement. He urged that the correspondence shows that the said plot is not even demarcated. He also invited our attention to the letter dated 1st January,

2013 addressed by the Controller of Unauthorized Construction of the CIDCO to the Petitioners. He pointed out that the Controller of Unauthorized Construction directed the Petitioners to approach the Lands and Estate Department for physical handing over of the said plot. He relied upon a letter dated 27th May, 2013 addressed by the Additional Chief Land and Land Survey Officer to the Senior Inspector of Police of Nhava Sheva Police Station recording that earlier when an attempt was made to demarcate the said plot, the local villagers obstructed and, therefore, demarcation could not be carried out. In substance, the submission of the learned counsel appearing for the Petitioners is that there is nothing on record to show that the original allottee Krishna and three others were placed in possession of the said plot. His submission is that in any event, as the said plot has not been even demarcated, there is no question of the CIDCO handing over the said plot to the original allottee. He, would, therefore, urge that a direction be issued to the CIDCO to hand over possession of the said plot. There is also a prayer made in the alternate directing the CIDCO to allot another plot having similar area in the similar vicinity.

3. We have given careful consideration to the submissions. It is not in dispute that the said Krishna and three others are the original allottees of the said plot. A copy of possession receipt executed by the

said Krishna and three others on 8th August, 2011 is annexed to the Petition which forms a part of the agreement to lease dated 23rd August, 2011 executed by the CIDCO in favour of the said Krishna and three others. It records that the said Krishna and three others were placed in possession of the said plot. What is material to note is the permission dated 23rd September, 2011 granted by the CIDCO to said Krishna and three others to transfer the said plot to M/s. Arihant Enterprises. A specific condition being the Condition No.8 has been incorporated in the said letter that it will be the responsibility of the said Krishna Gana Kamble and three others to hand over possession of the said plot to the transferee M/s. Arihant Enterprises. It is on the basis of this permission that M/s. Arihant Enterprises stepped into the shoes of the said Krishna and three others. By letter dated 27th December, 2011 issued by the CIDCO to said M/s. Arihant Enterprises, a permission was granted to M/s. Arihant Enterprises to transfer the said plot to the Petitioners. Identical clause 8 has been incorporated in the said letter recording that it is the responsibility of M/s. Arihant Enterprises to place the transferee in possession of the said plot.

4. The tripartite agreement dated 30th December, 2011 specifically refers to the permission granted to the original lessees to transfer the said plot to M/s. Arihant Enterprises. There is a recital

which specifically refers to the permission granted to M/s. Arihant Enterprises to transfer the said plot to the Petitioners. Therefore, the Petitioners cannot plead ignorance about the knowledge of the terms and conditions in both the letters under which the permissions were granted. It is pertinent to note that there are only 5 clauses under the tripartite agreement. There is no clause which provides that the CIDCO will hand over possession of the said plot to the Petitioners. Only obligation of the CIDCO provided in clause (1) is of the execution of the lease. Clause 2 specifically provides that the Petitioners described therein as the subsequent New Licensee shall be substituted for the original Licensee and shall have all the rights, obligations and liabilities under the Original Agreement of lease. Thus, the Petitioners cannot claim a better right than the right possessed by M/s. Arihant Enterprises. M/s. Arihant Enterprises was entitled to seek possession only from the said Krishna and three others. Permission granted to M/s. Arihant Enterprises to transfer the said plot to the Petitioners which is dated 27th December, 2011 proceeds on the footing that M/s. Arihant Enterprises is in possession of the said plot.

5. Therefore, the Petitioners are not entitled to seek possession of the said plot from the CIDCO. The Petitioners cannot be ignorant of the possession receipt annexed to the agreement executed in favour of the original allottees. But, the Petitioners have chosen to

address letters to different officers of the CIDCO making a grievance about the failure of the CIDCO to deliver possession of the said plot.

6. In view of the above discussion, we are of the considered view that the CIDCO was under no obligation to hand over possession of the said plot to the Petitioners as the CIDCO had parted with possession of the said plot to the original allottees. Therefore, it follows that the CIDCO is under no obligation to allot alternate plot to the Petitioners.

7. The remedy of the Petitioners is to proceed against their predecessors in title. By keeping the said remedy open, the Petition is rejected.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)