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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11512 OF 2013

Shri Suresh Balkrushna Salunke

(since deceased) through Lrs.

1. Smt. Vijaya Suresh Salunke and ors.

.. Petitioners

Vs.

The State of Maharashtra and ors.

.. Respondents

Mr. Girish Godbole i/by Mr. Abhijeet A. Desai a/w Ms. Vrushali L. Maindad for petitioners.

Ms. R. A. Salunkhe, AGP for State.

Mr. P. B. Kulkarni for respondent no.2.

Mr. H. P. Vyas for respondent no.3.

CORAM: NARESH H. PATIL &
M. S. KARNIK, JJ.

JANUARY 16, 2017.

P.C.

1. Petitioners challenge communication dated 20/7/2013 (Exhibit"E") issued by the Pimpri Chinchawad New Town Development Authority. Original Petitioner - Suresh Salunke and respondent no.3 got executed a Lease Deed in their favour from the Development Authority i.e. respondent no.2 by a Lease Deed executed on 18/8/1981. The relevant

clauses of the said Lease Deed are Clauses 3(r) and 3(s), which read as under:-

3(r) Not to sell, mortgage, assign, underlet or sub-let or part with the possession of the demised land or any part thereof or any interest therein without the previous written consent of the Development Authority. Consent may be granted by the Development Authority if the Lessee agrees either,

(i) To pay to the Development Authority one-half of the increase in the value of the land derived by the lessee such increase being equal to an amount by which the value of the land derived by him exceeds or has exceeded a premium or the price paid by him or his assignor and the market value of a building or erection or structure thereon. The decision of the Development Authority as to the market value shall be final and binding, or,

(ii) To sell to the Development Authority his interest under the Lease at a price which a prospective purchaser is willing to

pay him.

Provided that such consent shall not be given for a period of 5 years from the date of handing over possession of the demised land unless in the opinion of the Development Authority exceptional circumstances exist for the grant of such consent.

3(s) Not to subdivide the land demised to the Lessee.

2. During the pendency of the petition, original lessee – Suresh Balkrushna Salunke expired. His legal representatives were brought on record.

3. Mr. Godbole, learned counsel appearing for the petitioners submits that in view of the subsequent changes and developments, petitioners desire to assign the leasehold rights in favour of third party. This move was objected by the co-lessee i.e. respondent no.3.

4. The respondent no.2 – Corporation directed the petitioners to obtain consent of respondent no.3 in case the petitioners desire to assign their leasehold rights in favour of third party.

5. Learned counsel appearing for the petitioners, on instructions, submits that in case the respondent no.3 has any apprehension that his access to the residential premises would be obstructed to or in any way the residential peace would get disturbed, then proper undertaking would be submitted to respondent no.2 by the petitioners. Learned counsel further submits that the petitioner would take necessary care while assigning the rights to protect the interest of co-lessee as the plot was leased to both the lessees. The construction was carried out on the said plot jointly by both of them. Learned counsel submits that a clause of lease deed shall not be interpreted to mean that the petitioners or their legal heirs would be debarred from assigning their rights to third party in accordance with law.

6. Learned counsel appearing for respondent no.3 submits that he had already made offer, which is even now open to the petitioners to assign their rights in the subject property in favour of respondent no.3, who would be in a better position to enjoy the property and develop the same in case need arises. We do not express any opinion on the said offer. Learned counsel submits that the strict interpretation has to be put on the lease conditions. Learned counsel raises issue regarding maintainability of the

writ petition.

7. Learned counsel appearing for respondent no.2 submits that as per the direction of the court, the designated authority would hear the petitioners and respondent no.3 or their authorized representatives in respect of the issue raised before this court.

8. We direct that in case the petitioners file a comprehensive representation, addressed to respondent no.2 in respect of the subject matter, then the Designated Officer of respondent no.2 shall hear the parties and pass a brief reasoned order, without being influenced by the communications made by the respondent no.2, which are annexed at Exhibits "C" and "E" to the petition.

9. It is clarified that we have not expressed any opinion on merits of the matter. All issues are kept open. Petition is disposed of accordingly.

(M. S. KARNIK, J.)

(NARESH H. PATIL, J.)