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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5533 OF 2018 IN
LETTERS PATENT APPEAL NO.304 OF 2010 IN
WRIT PETITION NO.1980 OF 1998

Govind s/o Bajirao Sul, Died L.Rs.
Manik s/o Govind Sul, Died L.Rs.
Suman w/o Manikrao Sul and others ... APPLICANTS

VERSUS

Gaurishankar s/o Mohanlal Vyas,
Died L.Rs.
Purushottam s/o Mohanlal Vyas
and others ... RESPONDENTS

.....
Shri P.V. Mandlik, Senior Counsel with
Shri V.D. Gunale, Advocate for the applicant
Shri P.M. Vyas, respondent No.1-1 (party-in-person)
(Shri D.R. Bhadekar, Advocate for respondent No.1-1)
Shri Rajendra S. Deshmukh, Advocate for respondents No.1 to 8
Shri G.R. Syed, Advocate for respondent No.8
Shri H.V. Tungar, Advocate for respondent No.8(ii)(a)(b)
.....

CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

DATED : 24th APRIL, 2018.

ORAL ORDER :

1. The Civil Application is filed by legal representatives of Govind Bajirao Sul for giving directions to the respondent Gaurishankar Vyas that he should not change the nature of the

portion of 2 acres 4 gunthas from Survey No.243, situated at Latur.

2. Heard Mr. P.V. Mandlik, learned Senior Counsel for the applicant and Mr. Purushottam Mohanlal Vyas, respondent No.1-1 - (party-in-person). This Court collected information from Mr. G.R. Syed, learned counsel, who is representing one tenant Imamsab and learned counsel Mr. Rajendra Deshmukh, who is representing the third tenant Mehtab.

3. Present application has limited scope as one legal representative of a deceased tenant wants to see that the nature of the property, in respect of which possession order is made by Tenancy Court under the Hyderabad Tenancy and Agricultural Lands Act, is not changed. The submission made and the record show that the proceeding which was filed by tenants for getting possession of land admeasuring more than 11 acres out of this Survey Number is decided in favour of the tenants who were three in number, viz. Govind, Mehtab and Imamsab. It appears that, Govind died during the pendency of the tenancy proceedings and his legal representatives were not brought on record and that is the main contention made against the legal representatives of Govind by the respondent. The submission is made that, these three tenants were possessing the land under

joint tenancy rights and order is made by the authority that there was breach of condition under which the land which was in possession of the tenant was given to the landlady; as the landlady alienated the property which was given to her within the period during which she could not have alienated the property. It appears that, in the year 1964, the landlady got possession and she gave the property to Abdul Hamid by way of Hiba in the year 1967. This is the first alienation which is called as in breach of the condition, which were there for giving the possession to the landlady. From said Abdul Hamid, present respondent purchased some portion which is in dispute in the present matter.

4. Submissions made show that the order made in favour of the tenant that they are entitled to get the possession due to breach of condition was challenged up to this Court and learned Single Judge of this Court has dismissed the proceeding which was filed by the present respondent. This decision of learned Single Judge is under challenge in Letters Patent Appeal. This Court has granted stay to the order of possession made under Tenancy Act. When this Court makes any such order, this Court is expected to see that further complications are not created and the interest of all parties are protected. It can be

said that, for this single reason this Court is expected to see that no further change is made in the nature of the property by anybody including the present respondents, appellants of Letters Patent Appeal.

5. The respondent Mr. Purushottam Vyas, party-in-person submitted that, permanent constructions are already made on the disputed site and he has produced photographs of some buildings. This Court is not going into the merits like the present nature of the disputed space, but it is the duty of this Court to see that no further change is made in the nature of the property. This Court expressed that this Court is ready to appoint Court Commissioner to bring the present nature of the property on record but learned Senior Counsel for the applicant submitted that it is not necessary.

6. When this Court was dictating the order, learned Senior Counsel for the applicant again submitted that the applicant is interested in getting appointment of the Court Commissioner so that some record is created regarding the present nature of the property. He further submitted that, the exact location of the disputed space can be ascertained, in respect of the portion which is sold in favour of present respondent, who is appearing in person. In view of this

circumstance, this Court holds that Court Commissioner needs to be appointed to see that there is no further change made in the nature of the property. Advocate Shri Mandar A. Deshmukh, learned counsel is appointed as Court Commissioner. The applicant should deposit in the Court as the initial cost of Rs.10,000/- (Rupees ten thousand). The total amount of fee of the Court Commissioner will be decided subsequently. The initial amount of Rs.10,000/- is to be immediately paid to the appointed Court Commissioner. The copies of necessary record should be supplied to him which include copy of sale deed executed in favour of the present respondent. Copy of revenue map of the property is also to be supplied to him. If the city survey is done, then those maps should also be supplied to him so that it does not become difficult for him to ascertain the location the present nature of the property. It will be open for the parties to take photographs which can be treated as additional record for ascertaining the exact present nature of the property. Court Commissioner to see that he informs the date of his visit by giving notices to present applicants and present respondents.

7. The respondent party in person has placed reliance on following judgments :

- (1) Balraj Taneja Vs. Sunil Madan [1999 AIR (SC) 3381];
- (2) Laxman Dhondu Bhor, since deceased through his heirs Vithoba Laxman Bhor & ors. Vs. Chintaman Bhimrao Pagare & ors. [1987 Mh.L.J. 641];
- (3) Pankajbhai Rameshbhai Zal Vaidya Vs. Jethabhai Kalabhai Zalavaidya, deceased through L.Rs. and others [2018(2) Mh.L.J. 533] and
- (4) Jayalaxmi Janardhan Walawalkar and others Vs. Lilachand Laxmichand Kapasi and others [1998(3) Mh.L.J. 618]

8. The application is allowed. The respondent Gaurishankar Vyas and his legal representatives are hereby prevented from alienating 2 acres 4 gunthas portion of Survey no.243, which is shown to be purchased by Gaurishankar in any way and from changing nature of the property. The learned Advocate who is appointed as Court Commissioner is expected to be specific as to whether and which portion is now available as open space and which portion shown in the sale deed is already used for making construction. In those terms, the civil application is allowed and disposed of.

9. Authenticated copy of this order be supplied to both the sides and also to the Court Commissioner.

10. The court Commissioner is expected to submit his report within 45 days, but that is to be done only after supply of

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the necessary documents by the present applicant to him and after depositing the initial amount of Rs.10,000/- (Rupees ten thousand).

11. The observations are only for the purpose of present Civil Application and all points are kept open.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/