

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

**WRIT PETITION NO. 11406 OF 2017
ALONGWITH
CIVIL APPLICATION NO. 62 OF 2018
IN
W.P. NO. 11406 OF 2017**

Mrs. Marykala Johnson ... Petitioner.

V/s.

The State of Maharashtra,
through Principal Secretary for the State,
through Urban Land Development Ministry,
Mantralaya, Mumbai -400 032 & 8 Ors. ... Respondents.

Mr. B. K. Barve, Advocate a/w. Mr. Sanjeev Sawant, Sandeep Barve i/by B. K. Barve & Co. for the Petitioner.
Mr. Sandeep Babar, AGP for Respondent Nos. 1 & 5.
Mr. G.S. Hegde, Advocate a/w. Mr.C M. Lokesh for the Respondent Nos. 2, 3 & 4.

**CORAM : R. M. BORDE AND
RAJESH G. KETKAR, JJ.**

DATE : 02nd FEBRUARY, 2018

P. C. :

1 The Petitioner is praying for issuance of directions to the CIDCO Authorities to issue occupancy certificate for the

building constructed on Plot No. 130, Sector -15, Dronagiri, Taluka-Uran, Dist. Raigad in favour of the petitioner by dispensing with the payment of Maveja amount of Rs. 22,52,187/-, as demanded by the CIDCO Limited as per the communication dated 14.07.2017 and further requested to quash and set aside the said communication. The petitioner also prays for issuance of directions to Respondent Nos. 1 to 4 to dispense with the payment of alleged amount of Maveja of Rs.22,52,187/- and issue occupancy certificate of the building in question. The petitioner is the purchaser of the plot from the respondent no. 6. The petitioner is a lessee of the plot of land under the lease agreement executed by Respondent nos. 6 to 9. Respondent Nos.6 to 9 were granted lease holding rights in respect of the plot in question in lieu of acquisition of the larger landed area belonging to him under the Scheme of acquisition, popularly known as 12.05% Scheme. The petitioner has entered into a tripartite agreement with the CIDCO and original licensee, who agreed to acquire lease hold

rights in respect of the plot in question. Clause 2 of the tripartite agreement reads thus :

“2. The New Licensee shall be substituted for the original licensee in the said agreement and as shall have all the rights, obligation, liabilities, benefits and equities accordingly there under.”

2 So far as the liabilities of the original licensee under the agreement is concerned, it is recorded in the agreement to lease executed in favour of the original licensee by the CIDCO in paragraph - (f) as recorded below :

“(f) the intending Lessee/Lessee unconditionally agree to pay the additional lease premium of the land, which will be increased in the event reference court/ Special Land Acquisition Officer makes any enhancement in compensation in pursuance to the claims submitted under section 18 or 28(a) of the Land Acquisition Act, since the lease premium at the time of agreement/ lease has been worked out on the basis of compensation awarded by the concerned special Land Acquisition

Officer under section 11 of the Land Acquisition Act, 1894.”

3 The liability of the original licensee under the agreement executed with the CIDCO on 9th October, 2014 has been passed on to the petitioner in terms of clause (2) of the agreement dated 4th December, 2014. The petitioner contends that certain amount to the extent of more than Rs. 66 lakhs payable to the original licensee towards the amount of compensation is lying with the CIDCO authorities and in view of the undertaking given by the original licensee to the CIDCO on 20th February, 2014, it shall be the liability of the original licensee and the amount can be very well deducted from the amount payable to the original licensee. The argument is devoid of substance for the reasons that the agreement entered into is a tripartite agreement entered between the petitioner and the original licensee and the CIDCO where under all the liabilities incurred by the original licensee stood transferred to the petitioner. The terms and conditions recorded in the

original lease agreement dated 9th October, 2014 are binding and enforceable as against the petitioner in view of the clause (2) of the subsequent tripartite agreement dated 4th December, 2014. In view of said clause (2) name of the petitioner stands substituted in place of the original licensee in the agreement dated 9th October, 2014. The liability cast against the original licensee under the agreement dated 9th October, 2014 thus stand passed on to the petitioner in view of the subsequent tripartite agreement. The objection raised in the instant matter is no more *res-integra* and is covered by the decision rendered by this court in the Civil Writ Petition No. 11820 of 2013 in the case of **M/s. G.D.C. Builder Pvt. Ltd. vs. City and Industrial Development Corporation of Maharashtra Ltd.**, decided on 25th June, 2014.

4 For the reasons recorded above, the writ petition does not deserve favourable consideration and thus stand dismissed.

5 In view of the dismissal of the petition, civil application no. 62 of 2018 does not survive and stands disposed of.

(RAJESH G. KETKAR, J.)

(R. M. BORDE, J.)

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