

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION NO.3183 OF 2018

Sunder Nagar CHS Ltd.

... Petitioner

Vs

The Chief Executive Officer
Slum Rehabilitation Authority & Ors.

... Respondents

Mr.Amrut Joshi i/b Rajesh Mishra for the Petitioner

Mr.Karl Tamboli i/b C.N. Gole for the Respondent No.3

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: JULY 11, 2019

P.C.:

1. The petitioner has prayed for a direction to the respondents to forthwith demolish structures constructed by respondent No.3 on a portion of what the petitioner describes as garden area shown in the plan, copy of which is annexed at exhibit F. This petition is filed by the housing society. The petitioner's grievance is that respondent No.3 – Developer has put up structures on the recreational area which is contrary to the rules and regulations. The petitioner, therefore, seeks direction for demolition of the structures.

2. The record would however show that the construction commenced in the year 2014 at a time when the remaining development had taken place and members of the society were occupying their respective residential units. Thus, the construction was being carried out to the knowledge of the members of the society. However, for the first time, undisputedly, the objection raised by the petitioner was in 2017 when the entire construction was already over. For over 2½ years, thus, the petitioner raised no objection to the construction being carried out. The present petition has been filed some time in June, 2018. Thus, the petitioner's first objection on record was after 2½ years of commencement of construction and the petition came to be filed about 3½ years from such starting point. The petition, therefore, suffers from gross delay and laches. However, this is not the sole ground on which we would have been persuaded to dismiss the petition. One more weighty ground is that the revised sanction plan at exhibit F itself permits the developer to carry out such construction. This plan shows two recreational areas of 205.24 sq.mtrs. and 155.50 sq.mtrs. The calculation sheet shows that the Developer was required to leave a recreational space of 299.14 sq.mtrs. against a

total of 360.74 sq.mtrs. of combined area of the said two recreational grounds. Out of these two grounds, small parcels of lands were separated out for construction of a society office and a rehab. unit as well as underground tank with pump room. The total area covered by such construction came to 155.5 sq.mtrs thus, leaving sufficient open land for recreation. Though the Counsel for petitioner submitted that this modification permitted by the authorities was not as per the building regulations, admittedly, the petitioner has not challenged the sanction of the revised plan. In absence of testing the legality of the revised sanction plan, we cannot haul up the developer for having carried out the construction in consonance with the plan. The direction for demolition of the structures, therefore, obviously cannot be issued.

3. Petition is dismissed.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)