

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

WRIT PETITION NO. 12841 OF 2022

Babosa Corporation Partner

...Petitioner

V/s.

The Competent Authority and
District Deputy Registrar and anr.

...Respondents

Mr. Pritesh Burad a/w. Mr. Yash Dadriwal i/by. Pritesh Burad Associates, for the Petitioner.

Mr. P.P. Pujari, AGP for the Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

Dated : 21 September 2023.

P.C. :

1. By this order, the Petitioner challenges order dated 14 June 2022 passed by the Competent Authority and District Deputy Registrar of Co-operative Societies, Thane allowing the application of the Chief Promoter (Respondent No.2) for registration of Society by name-Babosa A-1 Industrial Premises Co-operative Society Limited under the provisions of Section 10(1) of the Maharashtra Ownership of Flats Act (**MOFA**).

2. I have heard Mr. Burad, the learned counsel appearing for the Petitioner. He would submit that the Petitioner owns four industrial units in the structure. That nine members have recorded their dissent for registration of a Co-operative Society. That therefore, the Promoters did not fulfill the requisite number of 60% consenting members for registration of Society. He would further submit that the application for registration of the Society was made under the provisions of the Maharashtra Ownership of Flats (Regulation of Promotion for Construction, Sale, Management and Transfer) Act, 1963, whereas the Competent Authority had granted registration of the Society under the provisions of Section 10(1) of the MOFA. He would invite my attention to the relevant Clauses of the Agreement under which the formation of Society was to be done only after the Developer completes the entire project. He would submit that registration of the Society at this pre-mature stage would completely frustrate the plans of the Petitioner of carrying out repairs as well as for maintenance of the entire property.

3. I have considered the submissions of the learned counsel for the Petitioner. Perusal of the order dated 14 June 2022 would indicate that there are total 37 industrial units in the structure constructed by the Petitioner. Out of the said 37 industrial units, 4 units are apparently in occupation and ownership of the Petitioner. It is Petitioner's case that, 9 unit-holders are not willing to join the Society. This would show that there are total 13 dissenting members for formation of the Society. Even if those 13 members are kept out,

it would indicate that there are atleast 24 members who have no objection to registration of the Society. The Competent Authority has taken note of the fact that 23 Promoter-members have participated in registration of the Society which is more than 51 % of the total unit-holders. Though, the learned counsel for the Petitioner attempted to contend that in respect of the commercial premises, the requisite percentage is 60% and not 51%, he has not placed any document on record in support of his contention. So far as the reliance of the learned counsel for the Petitioner on the covenants in the Agreement is concerned, the contractual obligations under the Agreement would not decide as to when a Society which is otherwise registrable under the provisions of law, can actually be registered. Registration of a Co-operative Society is governed by the Statute and not by contractual obligations between the parties. The Competent Authority has recorded a satisfaction that more than 51 % of the industrial unit-holders have consented to formation and registration of a Co-operative Society. On account of Petitioner's non-co-operation for registration of the Society, the said members were required to file proceedings before the Competent Authority. In this view of the matter, no error can be traced in the order dated 14 June 2022 passed by the Competent Authority. The Writ Petition being devoid of merits is dismissed without any orders as to costs.

**NEETA
SHAILESH
SAWANT**

SANDEEP V. MARNE, J.

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NEETA SHAILESH
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