

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1158 OF 2024

Freedom Park Co-operative Housing
Society Ltd.

....*Petitioner*

: *Versus* :

Amit Enterprises and anr.

....*Respondents*

Mr. Harihar Bhave with Ms. Rupa Bhave, Ms. Divya Menon and Ms. Jaanam
Bambor i/by. Bhave & Co., for the Petitioner.

Mr. Aadesh M. Patil, for Respondent No.1.

Mr. S.D. Rayrikar, for Respondent No.2-State.

CORAM : SANDEEP V. MARNE, J.

Dated : 7 March 2025.

P.C. :

1) The petition challenges communication dated 3 December 2012 of District Deputy Registrar, Co-operative Societies, Pune City, Pune informing the Chairman of the Petitioner-Society that the proposal for unilateral deemed conveyance cannot be entertained on account of classification of Petitioner-Society as 'other society'. Though, the impugned communication is issued on 3 October 2012, the petition is filed on 14 September 2022. After noticing delay and laches on the part of the Petitioner in filing this petition, this Court granted leave to incorporate pleadings regarding laches in the petition by order dated 13 March 2024. However, beyond incorporating para-33A relating to

adoption of several steps orally and in writing between 2014-2023 to remind Respondent no.2-Competent Authority to consider Society's application for change of status from 'other housing societies' to 'Tenant Ownership Housing Society', no pleading is incorporated to justify delay in filing the petition. The application allegedly made to the Competent Authority to change classification of the Society has nothing to do with challenge to the impugned communication dated 3 October 2012. In my view, therefore there is no adequate justification to explain delay and laches of over 9 years in filing the petition. This Court is therefore not inclined to entertain the present petition.

2) Even otherwise, it appears that what was sold to the members of the Petitioner-Society were only open piece of land without carrying out any construction thereon. In *K.G. Associates and Anr. Versus. District Deputy Registrar, Co-operative Societies and Ors.*¹ this Court has held in paras-29, 32 and 33 as under :

29. Considering the definitions of 'Flat' under MOFA and 'Apartment' under the Apartment Ownership Act, some construction is contemplated on the land for being treated as a flat or an apartment. Therefore, a vacant plot of land would not fit into the definition of the term 'Flat' under MOFA or an 'Apartment' under the Apartment Ownership Act. To this extent, the submission of Mr. Godbole that an open plot of land would not fit into the definition of the term 'Flat' under MOFA appears to be correct.

32. Under MOFA, construction or cause of construction of a block or building of flats/apartments is mandatory for fitting a person within the definition of the term 'promoter'. Thus where mere open plots of land are sold without any construction, the person developing such land would not become promoter under MOFA. Possibly the Legislature has expanded the scope of regulation of activity of sale of mere vacant plots of land by

¹ 2023 SCC Online Bom 2132

brining the same within the ambit of RERA. However something which is not provided for in MOFA cannot be read into it by making a refernce to a subsequent legislation.

33. Therefore a mere open plot of land, where nothing is constructed or agreed to be constructed, would not qualify as a 'Flat' within the meaning of MOFA. Therefore, the agreements in respect of 219 members of Respondent No.2-Society, who agreed to purchase mere open plots of land cannot be treated as agreements under the provisions of Section 4 of MOFA.

3) It appears that SLP preferred against the judgment of this Court in *K.G. Associates* (supra), has been dismissed by the Hon'ble Supreme Court. Therefore, even on merits there is no warrant for interference in the impugned communication. The Writ Petition is accordingly **rejected**. However rejection of the petition shall not come in the way of the Petitioner-Society in filing a Civil Suit for seeking conveyance of land in its favour. All contentions of the parties are expressly kept open to be agitated in the suit, if filed by the Society.

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[SANDEEP V. MARNE, J.]