

LAW & POLICY UPDATE

SEPTEMBER 20, 2023



Government's initiative to convert Collector's land to freehold

There have been a host of issues and challenges with respect to permissions on government and nazul land in Maharashtra. In order to alleviate some of these concerns pertaining to land and land revenues, the Maharashtra Land Revenue Code, 1966 (**Code**) was enacted, which deals with the procedure of transfer of Government land to freehold land. An amendment to the Code in 2015 introduced Section 37A, which imposed restrictions on sale, transfer, redevelopment, change of use, etc. in relation to government land and nazul land. As amended, Section 37A(2) provided that the State Government (**SG**) shall grant permission upon payment of premium or charges and share of unearned income subject to terms and conditions as may be specified.

Initially, Government land was given for housing and non-housing purposes with a premium of 50% of the ready reckoner rate. If anyone intended to carry out construction or sell any flat or property in the building constructed on such land, they had to first take the Collector's permission and only upon payment of premium, the Collector would allow any construction and sale of flats. With a view to further streamline the process, the SG has passed several resolutions over the past few years in terms of permission for conversion of land into freehold and premium to be paid for such conversion. The pertinent resolutions are enumerated hereinbelow:

List of Government Resolutions:

- **Government Resolution dated April 13, 2017:** The Revenue and Forest Department (**Department**) issued **GR April 2017** which *inter alia* includes but is not limited to grant of permission for re-development or re-construction on Government land upon payment of 25% premium on the market value of residential, commercial, and industrial land, and 12.5% premium for the land used for charitable and educational purpose.
- **Government Resolution dated July 7, 2017:** The Department thereafter issued **GR July 17** which *inter alia* includes but is not limited to transfer of the flat that takes place without prior written approval of the concerned District Collector. In such instances, a penalty of twice the rates of the transfer charges as mentioned hereinunder shall be levied.

The transfer of residential flats of Mumbai District in a Co-operative Housing Society (**CHS**) after a period of 15 years from receipt of Commencement Certificate shall be INR 200 per sq. ft. or 1.5% of the assessment of the flat as per the prevailing rate, whichever is higher; for commercial/industrial premises, the same shall be INR 1000 per sq. ft. or 6% of the assessment of the flat as per the prevailing annual rate, whichever is higher.

- **Government Resolution dated February 23, 2018:** Various grievances were received from people who owned flats or premises in a CHS that were constructed on government land and were in dilapidated condition, wherein the members were unable to pay the high premium charges. Therefore, a resolution was passed wherein it was stated that redevelopment of residential, commercial, and industrial premises in Greater Mumbai shall attract a surcharge at the rate of 10% of the prevailing annual rate

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statement, whereas, for educational or charitable purpose, the surcharge shall be levied at the rate of 5% prevailing annual rate statement and 2.5% of the prevailing annual rate statement for redevelopment for educational or charitable purposes.

- **Government Resolution dated March 8, 2019:** The Revenue and Forest Department notified the Maharashtra Land Revenue (Conversion of Occupancy Class II and Leasehold lands into Occupancy Class I Lands) Rules, 2019 (**2019 Rules**) which is *inter alia* applied to the land granted or subsequently allowed to be used for agricultural, residential, commercial or industrial purpose on Occupancy Class II or leasehold rights.
- **Government Resolution dated February 22, 2022:** The SG had issued a resolution that levied a penalty between 1% to 5% of the ready reckoner rate to regularize the membership of societies which were not recognized by the Collector.
- **Government Resolution dated March 27, 2023:** Vide **GR 2023**, the SG extended the timeline of payment of premium for conversion of government land to freehold land, which was notified in the abovementioned 2019 Rules, from 3 years to 5 years.

Our viewpoint

Over a period of time, the SG has taken into account the issues faced by occupants residing in the buildings standing on Government land. The procedure for conversion of such land to freehold is indeed time consuming and includes the additional burden of paying higher premium. To ease these concerns, the SG has time and again modified the applicable regulations and relaxed the restrictions for transfer of flats, premises, and land belonging to the Collector. The SG has implemented schemes to convert the Collector's land to freehold upon payment of a certain amount and has reduced the amount of premium to be paid to encourage such transfers and to facilitate subsequent development/redevelopment on such lands.

There are instances where the Developers are quite hesitant to undertake development on the land belonging to the Collector. However, the above initiatives by the SG shall hopefully pave way for development or redevelopment of buildings standing on the Collector's land and assist the CHS and the lessors of the buildings in obtaining the Collector's permission.

It is pertinent to note that a request has been made to further reduce the percentage of premium considering the fact that most of the buildings standing on the Collector's land in Mumbai are in dilapidated condition and decrease in the premium rates shall attract more societies to apply for such conversion. This will likely encourage a larger number of societies to explore potential conversion, thereby boosting the revenue of the SG significantly.

