

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3944 OF 2016

Vasant Haribhau Rakshe & Ors .. Petitioners
Versus
The District Collector, Pune and ors .. Respondents

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Mr. Tejas D. Deshmukh, Advocate for the petitioners.
Mr. B. V. Samant, AGP for the State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.
DATED : 5th JUNE 2018

P.C:-

1 The petition concerns a demand which has been raised on the petitioners, copy of this demand is at page 22 (Exhibit-D) to the paper book.

2 The demand says that on 22nd January 2014, the petitioners made an application for granting permission for non agricultural user. The land initially was allotted for agricultural purpose/use. Firstly, this communication/demand informs the petitioners that they should make a fresh application after paying the amount which is styled as "a demand for granting

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permission for non-agricultural user". Secondly, it says that once this amount is paid, does not mean that the non-agricultural user permission is granted, and therefore, the petitioners should not commence any construction activity. It is only when the non-agricultural user is permitted and an order is made in that behalf that the petitioners can commence the non-agricultural user.

3 Mr.Deshmukh appearing for the petitioners would submit that this demand is raised under a complete misconception. It is common ground that the land described in paragraph no.4 of the petition was allotted/granted to the predecessor in title of the petitioners as *Patil-Watan*. After enactment of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962, the land was resumed by the State Government as the unalienated land. The predecessor in title of the petitioners paid the stipulated re-grant price and the land was re-granted to them. Hence, the petitioners' predecessor in title and the petitioners were holders of the land as Class-II occupants.

4 The petitioners through their Constituted Attorney preferred an application, firstly, for seeking conversion of the occupancy from Class-II to Class-I. The second respondent to this petition, by a communication of 20th December 2013 directed the petitioners to pay 50% of the market value as 'Nazrana' amount and which was computed. The petitioners paid that amount and produced the challan. Thereafter, the necessary entries were made. The petitioners desired to change the user and by relying upon deletion of a condition mentioned in the other rights column of the 7/12 extracts of the land and by which the petitioners were required to pay 50% of the market price while changing the user of the land from agricultural to non-agricultural purpose. Thus, by deletion of this entry, according to Shri Deshmukh, for conversion of the user from agricultural to non-agricultural, no occupancy price/nazrana could have been charged and what could have been recovered at the time of granting permission for conversion of the occupancy, cannot by a back door or oblique method be recovered as a premium or condition for non-agricultural user. The attempt to recover that amount by

Exhibit-D is thus under challenge. The petitioners have paid the amount demanded under the demand notice under protest. Thus, they have paid the sum of Rs.56,81,800/- but under a protest. Now, the petitioners are awaiting the permission. However, once again they are being told to pay amounts which are not payable at all.

5 After having heard both sides and finding that the State could not satisfy as to how the amount can be demanded twice, we express an opinion that the petitioners' application for conversion of the user from agricultural to non-agricultural should be dealt with afresh, but without insisting on any payment and as demanded under Exhibit-D. It is agreed that the petitioner will make a fresh application and that application will be decided by the Collector of the concerned District in accordance with law.

6 In terms of the agreement of the petitioner to make a fresh application, we allow the petitioner to approach the Collector of the District with such application, and that

application, be dealt with and considered by the Collector afresh and without being influenced by the demand raised under Exhibit-D to this petition. That application shall be decided on its own merits and in accordance with law after the petitioner is granted an opportunity of personal hearing. The application be disposed of as expeditiously as possible and within a period of two months from the date of communication of our order.

7 In the event the petitioner is dissatisfied with the order on this application, or grant of any permission, but conditionally he is free to file an appeal in terms of the remedies provided by the Maharashtra Land Revenue Code, 1966. The Writ Petition is disposed of by clarifying that beyond noting the factual aspects and which are undisputed, we have not expressed any opinion on the proposed non-agricultural user by the petitioners. We have only directed that amounts which are not payable for grant of permission from agricultural to non-agricultural user cannot be demanded from the petitioner. No amount of price or value of the land in the

market or any differential can now be demanded as that was co-related with the conversion of occupancy from class II to class I. That is a distinct aspect than granting the permission for commencement of a non-agricultural user. Let the authorities therefore, not confuse themselves and demand anything over and above permitted by law for granting permission for commencement of non-agricultural user when the land is initially granted for agricultural purpose. That such an application can be made in law is equally undisputed before us. Hence, the writ petition is disposed of with the above direction. There will be no order as to costs.

8 Since the petitioner has paid an amount under protest, any sum which is not payable for grant of permission for commencement of non-agricultural user, shall be refunded to the petitioner and only the amount due and payable in law can be retained by the State.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)