

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4828/2019

- 1) AL-TAJ, Agro Products Pvt. Ltd.,
through, its Director, Mohd., Iqbal
Taji, Aged: Major, Occ.: Business,
R/o: Tawwakkal Taj Manzil, Madan
Chowk, Kamptee, Dist. Nagpur.
- 2) Mustafa Shah Ramzan Shah,
Occ: Household, Aged about 61 Years.
Vikas Nagar, Ward No.2, Kondhali,
Tq. Katol, Dist. Nagpur.

..... PETITIONERS

// VERSUS //

- 1) State of Maharashtra, Through its
Secretary Revenue and Forest
Department, Mantralaya, Mumbai.
- 2) The Tasildar, Kotal, Tq. Kotal,
Distt. Nagpur.
- 3) The Sarpanch, Gram Panchyat,
Sabkund, Tq. Kotal, Dist. Nagpur.

.... RESPONDENTS

Mrs Prajakta Chaudhari, Advocate for petitioners.
Shri A. A. Madiwale, AGP for respondent nos.1 and 2.
Shri N. A. Vaidhya, Advocate for respondent no.3.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 19/03/2021

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

1) Heard Mrs Prajakta Chaudhari, learned counsel for the petitioners, Shri Madiwale, learned AGP for respondent nos.1 and 2 and Shri Vaidhya, learned counsel for respondent no.3. Shri Vaidhya, learned counsel for respondent no.3 has sought time in the matter. We do not think that any purpose would be served by granting further time to respondent no.3 as basically the grievance raised in this petition is against respondent nos.1 and 2. Therefore, the prayer is rejected.

2) **Rule.** Rule made returnable forthwith. Heard finally by consent.

3) The petitioners have sought permission for construction of Food Processing and Cold Storage Unit for processing of meat on a land, which is already belonging to petitioner no.2 and which has the present status as of a non-agricultural land. There is no dispute about these facts.

4) Respondent no.2, however, rejected such permission on the sole ground that Gram Panchayat, Sabkund has taken an objection to grant of such permission. It is stated in the impugned order dated 25.07.2019 that Gram Panchayat, Sabkund i.e. respondent no.3 has not given any “no objection certificate” and therefore, without making any further inquiry into the matter respondent no.2 refused the permission. It is the contention of the learned counsel for the petitioner that the

permission has been refused not because there is any violation of rules or law but only because concerned Gram Panchayat has not granted “no objection certificate”. Learned counsel for the petitioners submits that even the contention that Gram Panchayat, Sabkund has not granted no objection is incorrect as the very Gram Panchayat has issued a “no objection certificate” on 26.06.2013 and this issue is pending with respondent no.2 since then.

5) Shri Madiwale, learned AGP for respondent nos.1 and 2 defending the impugned order submits that now there is a subsequent development and it shows that on 20.03.2018, this issue was considered by Gram Panchayat and the Gram Panchayat found that it would not be appropriate, in the circumstances, to grant permission for construction of the Food Processing and Cold Storage Unit on the land belonging to petitioner no.2 and therefore, no fault could be found in the impugned order.

6) The argument so advanced, on behalf of respondent nos.1 and 2 cannot be accepted for several reasons. Firstly, the land is already converted into non-agricultural use and that it belongs to petitioner no.2. Secondly, the conversion of the agricultural land of petitioner no.2 into non agricultural one has been allowed by Collector, Nagpur only for the purpose of construction of Food Processing and Cold Storage Unit thereon. This permission has been granted under Section 42-A of the

Maharashtra Land Revenue Code, 1966 vide communication dated 30.01.2018 (Annexure – 2). When the non-agricultural user permission has been granted only for the purpose of construction of Food Processing and Cold Storage Unit, the only option left to respondent no.2 in such a case, is to examine the issue from the view point of compliance with applicable rules. However, as seen from the impugned order, it is not the case of respondent no.2 that the permission so sought by the petitioners is against any of the applicable rules. It is the case of respondent no.2 that just because Gram Panchayat, Sabkund has refused to issue any “no objection certificate” that he thought it fit to refuse the “no objection certificate”. But, in the light of the non-agricultural user order dated 30.01.2018, that refusal has become insignificant, unless the applicable rules mandatorily required obtaining of “no objection certificate” from the Gram Panchayat, which, however, is not the case of respondents no.1 and 2.

7) Apart from the aforestated reasons, there is another reason why we find that the impugned order cannot be sustained in the eye of law. While impugned order relies upon the communication of Sarpanch Gram Panchayat, Sabkund received on 20.03.2018 showing that Gram Panchayat has objection if construction permission is granted, the same Gram Panchayat on 26.06.2013 has granted “no objection certificate”. This earlier “no objection certificate” had the signatures thereon of not

only Sarpanch but also Secretary while the communication received on 20.03.2018 is having signature of only Sarpanch. This later/communication makes no reference to the earlier “no objection certificate”. It also does not say that the earlier “no objection certificate” was recalled by the Gram Panchayat after giving due opportunity of hearing to the petitioners. This later communication, if it is to be considered for any purpose, would have to be treated as a decision which reviews the earlier decision of Gram Panchayat taken on 26.06.2013. We do not think, it is permissible in law to do so without giving any opportunity of hearing to the petitioners as the issue of grant or refusal of “no objection” has civil consequences for the petitioners. In the present case we find no opportunity of hearing has been granted to the petitioners and, therefore, the communication received on 20.03.2018 does not hold good and ought not to have been considered by respondent no.2 for taking a decision in the matter.

8) Even otherwise, we have already found that after grant of any user permission by the Collector for a specific purpose, all that was required to be done by respondent no.2 was to examine the subject from the view point of making of necessary compliances with the applicable rules. We are not aware as to whether or not respondent no.2 has examined the subject from this angle. But, a reasonable inference can be drawn that respondent no.2 must have examined this subject from the

perspective of compliance with the applicable rules and that is the reason why, neither the impugned order nor the reply filed by respondent no.2 takes recourse to any other ground than the objection taken by Gram Panchayat, Sabkund as reflected in the communication received on 20.03.2018 to justify the impugned decision. In the circumstances, we are of the view that the impugned decision must go and this petition deserves to be allowed.

9) The petition is allowed. The impugned decision is hereby quashed and set aside.

10) Respondent no.2 is directed to verify as to whether or not the petitioners fulfill the conditions mentioned in the applicable rules/circulars/government resolution/notifications, if any, and on being satisfied about the same, grant permission to the petitioners for construction of Food Processing and Cold Storage Unit on the subject land within a period of four weeks from the date of the order.

Rule accordingly. No costs.

(AVINASH G. GHAROTE, J)

(SUNIL B. SHUKRE J.)