

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4843 OF 2015

Sitabai w/o Rambhau Jorvekar,
Age : 61 years, Occupation : Business,
R/o Karajgaon, Tq.Newasa,
Dist.Ahmednagar.

...PETITIONER

-VERSUS-

The Tahsildar, Newasa,
Tq.Newasa, Dist.Ahmednagar.

...RESPONDENT

...
Advocate for the Petitioner : Shri Karpe Rahul R.
AGP for the Respondent : Shri Kiran B. Jadhavar
...

CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 27th January, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner, who is widow, aged 61 years, has approached this Court being aggrieved by the order dated 04.03.2015 passed by the Tahasildar, Newasa thereby, cancelling the Non Agricultural (N.A.) permission dated 06.08.1992 granted in her favour, in an arbitrary manner.

3. The present case is a classic illustration of the highhandedness on the part of the officer of the State Government and that too acting at the instance of the third party and playing in the hands of such party, who despite being defeated in all rounds of litigation, is able to obtain favourable orders from the Tahasildar, Newasa against the petitioner.

4. In order to appreciate the arbitrary action of respondent No.1/ Tahasildar, Newasa, it is necessary for me to refer to the brief facts in the background.

The petitioner, being the widow and being left with no source of livelihood, proposed to start traditional brick-kiln business on the property inherited by her. Since it contemplated obtaining requisite permission to convert the agricultural land into non agricultural one, she preferred an application to the Tahasildar for seeking such permission under Section 44 of the Maharashtra Land Revenue Code, 1966. By exercising the powers conferred upon the Collector and delegated to the Tahasildar, Newasa, on 06.08.1992, she was permitted to use 10 R of land out of Survey No.51 of village Karajgaon, Taluka Newasa for non agricultural purposes and the said permission contemplated that the land shall be used for the purposes for which it's user is sanctioned and if at all, change of user is contemplated, an application shall be preferred in this regard. The activity for which the conversion was sought, was

contemplated to be commenced within a period of one month and one of the clause in permission contemplated that if there is any breach of condition subject to which the permission was granted, the permission was liable to be cancelled.

The copy of the N.A. permission dated 06.08.1992 is placed on record at Exhibit-A.

5. Upon obtaining necessary permission, the petitioner commenced the activity of brick-kiln on the said land. While she was undertaking the said activity, one busy body Shri S.T.Rajguru from the said village, lodged frivolous applications against her to the various authorities alleging pollution in the village, though apart from him, not a single villager objected to the said running of brick-kiln business. This constrained the petitioner to file RCS No.27/2005 before the Civil Judge, Junior Division, Newasa, seeking perpetual injunction against Shri S.T. Rajguru and others. The said suit came to be decreed on 23.01.2009 and the members of Rajguru family, who were defendants in the said suit, through agents, servants, representatives or any other person on their behalf, were restrained perpetually from causing obstruction to the peaceful possession of the petitioner over the suit property and from running the brick-kiln business in the said property.

Being aggrieved by the said decree, Shri S.T. Rajguru instituted RCA No.14/2009 before the Appellate Court along with the

application for stay and the proceedings landed in this Court at the instance of the present petitioner in the form of Writ Petition No.6063/2013. Recording that the Trial Court has decreed the suit, the petitioner has permission from the Tahasildar to carry out the activity of brick-kiln manufacturing on the suit land, the said permission is in force, on an earlier round, the writ petition filed by Shri S.T. Rajguru was disposed of by the Division Bench and the matter was referred to the National Green Tribunal, this Court by order dated 07.01.2014 disposed of Writ Petition No.6063/2013 by continuing the order of status-quo granted on 16.09.2013 till the disposal of the appeal and the Appellate Court was directed to expeditiously dispose of the appeal preferably within a period of six months. Ultimately, on 17.06.2014, even the RCA No.115/2014 (old No.14/2009) preferred by Shri Rajguru came to be dismissed.

6. Pertinent to note that by order dated 01.10.2013 in the earlier round of Writ Petition No.2059/2013 before this Court, by relying upon the decision of the Apex Court in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others, 2010 EO-O-3441*, the petition pending before the High Court came to be transferred to the National Green Tribunal, Bench at Pune. On being transferred from the High Court, the said petition came to be adjudicated by the National Green Tribunal and the Tribunal was confronted with the following issues :-

- “1) Whether it can be said that the bricks kiln run by the concerned Respondents are being run in breach of the environmental norms and particularly any parameters fixed by the MPCB or under any Rules of the State Government?”*
- 2) Whether it is necessary to give directions to the Respondents to immediately close down the brick kiln?*
- 3) Whether it is necessary to give any other directions, in order to ensure environmental protection and particularly prevention of air pollution which is likely to be caused due to running of the clamp type (country) brick kilns, without fixation of proper norms?”*

7. On a detailed consideration of the aforesaid issues, the application came to be partly allowed with the following directions :-

- “a. The Brick kilns operated by concerned Respondents shall not be operated beyond 1st September 2014, without the necessary consent of MPCB.*
- b. MPCB shall formulate and notify the emissions standards for clamp type traditional brick kilns under the provisions of Air (P&CP) Act, 1981, within a period of 4 months following due process of law. CPCB shall provide necessary technical assistance for the same.*
- c. The State Government of Maharashtra shall consider framing of suitable Rules for brick kilns, may be on line of the Rules notified by the Uttar Pradesh viz. Uttar Pradesh Brick Kilns Setting Criteria for Establishment Rules, 2012 or other Rules/ guidelines prevailing in other State like State of Rajasthan, Andhra Pradesh, within next 4 months.”*

8. The operative portion of the order of the Tribunal dated 24.02.2014 reads thus:-

- “42. We make it clear, however, that Respondents owning and operating brick kilns will have a right to apply for permission or the consent to establish and operate the brick-kiln in their land if such application is in*

accordance with relevant norms. The competent authority may consider their application as per the norms/ rules existing as on the date of such application. In case such valid permission is granted, they may operate the brick-kiln without causing environmental damage as per the conditions that may be imposed by avoiding environmental degradation/ nuisance/ damage.”

9. As a consequence of the order passed by the National Green Tribunal, the activity of the petitioner to operate the brick-kiln business was stalled. Since the requisite permissions were sought from the Maharashtra Pollution Control Board (for short “the MPCB”), the petitioner moved an interim application before the National Green Tribunal awaiting the framing of guidelines and the Tribunal passed the following order on 19.02.2015 :-

“We have heard learned Advocate for the parties and original Applicant Sonya Bapu Rajguru.

MPCB has filed additional affidavit through Mr.V.V.Shinde, the Regional Officer, Nashik. The affidavit is taken on record and marked Ex.X.

The affidavit indicates that now MPCB has framed standards for brick kilns, including stake high particulate matters, emissions, etc.

Learned Advocate Mr.D.M. Gupte states that same standards, which are fixed by MoEF have been adopted mutatis mutandi. Thus, consent regime of clamp type brick kiln is now circumscribed as per the standards fixed by MPCB, which is clearly defined.

The brick kiln of original Respondent No.7 was closed down and he has submitted Application for consent to operate the same. Mr.Gupte, learned Advocate states that MPCB will consider his Application independently, according to the norms now laid down and fixed as per the standards, which have been adopted and decided by

MPCB. In view of this matter, nothing remains to be complied with. MPCB is directed to give due publicity to such prescribed standards and also, its decision to bring clamp type bricks in consent management regime, and further ensure the compliance. The Application No.7 (THC)/2013 (WZ) and Application No.36 (THC)/2013, are duly complied with and disposed of.

10. In the wake of the said order being passed on 19.02.2015, the petitioner applied to the MPCB and Shri Karpe, the learned counsel for the petitioner, informs the Court that the said application is under consideration.

11. In the background of these facts, respondent No.1/ Tahasildar passed the impugned order on 04.03.2015 and it has reference to the application of Shri Sonyabapu Tukaram Rajguru (S.T. Rajguru), who was defendant No.2 in RCS No.27/2005 and by giving reference to the letter of the Regional Officer, MPCB, Nashik, dated 22.01.2015, the Tahasildar proceeded to pass the impugned order. The impugned order narrates that Shri S.T.Rajguru had preferred the application to the National Green Tribunal and in order to implement the decision of the Tribunal, he requested the Tahasildar to cancel the N.A. permission. In the background of the request made by Shri S.T. Rajguru, it is recorded that the National Green Tribunal has directed the closure of the business of brick-kiln run by the petitioner in Gat No.51/2A and pursuant thereto, the MPCB, by order dated 22.01.2015, had directed the closure of the brick-kiln business and

the Circle Officer, Sonai, in his report dated 03.02.2015, has informed that the brick-kiln is shut and even the son of the petitioner has recorded his statement to the effect that the brick-kiln is no more functional.

In the backdrop of the aforesaid facts, the Tahasildar, Newasa, cancelled the order dated 06.08.1992 granting N.A. permission in favour of the petitioner.

It is this order dated 04.03.2015 which is challenged by the petitioner in the present Writ Petition.

12. On perusal of the record, it can be seen that the order granting NA permission came to be passed by the Tahasildar, Newasa, on 06.08.1992 and the powers are conferred upon the Collector under Section 44 of the Maharashtra Land Revenue Code, 1966, to grant permission to use the agricultural land for non agricultural purposes. Such permission can be granted after due enquiry on such terms and conditions as the Collector may specify and upon such permission being granted, the Tahasildar shall be informed about the date on which the change of user of the land commenced.

By exercising the said power conferred upon the Collector and delegated to the Tahasildar, vide order dated 06.08.1992, the Tahasildar permitted non agricultural use of the land belonging to the petitioner subject to stipulations contained in the order, which contemplated payment of annual fees for use of land for NA purposes and

breach of any of the conditions, permitted the authority to cancel the permission so granted.

13. According to the permission granted in favour of the petitioner, the Village Panchayat issued no objection in favour of the petitioner to carry out the activity of brick-kiln on the said piece of land and 7/12 extract effected necessary changes to that effect. The petitioner also paid requisite assessment fees from time to time and enjoyed the benefits of the order passed by the Tahasildar permitting the user of the land for non agricultural purposes.

14. From the record, it is manifest that Shri Rajguru and his family created obstructions in the way of the petitioner for operating the brick-kiln. When the petition filed by the said Shri Rajguru was made over to the National Green Tribunal, the Tribunal examined the issues on the larger platform and issued the directions, which I have already reproduced above. As a consequence of the order passed by the Tribunal, the brick-kiln operated by the petitioner was directed not to be operated beyond 01.09.2014 without obtaining necessary permission from the MPCB. Awaiting the standards fixed by the MPCB for clamp type traditional brick-kiln and to notify the emissions, the petitioner approached the Tribunal and certain directions came to be issued. While disposing of the petition, the Tribunal directed that the persons operating brick-kiln will have right to apply for permission or the consent to establish and operate the brick-

kiln in their lands if such application is in accordance with relevant norms. The emphasis of the Tribunal was upon the damage being caused to the environment and therefore, by avoiding environmental degradation/ nuisance/ damage, the MPCB is permitted to grant permission.

15. In furtherance of the directions of the Tribunal, the MPCB issued the notice to the petitioner on 22.01.2015 informing that the petitioner is operating the brick-kiln in “pollution prevention area” and hence, it is mandatory to obtain permission under the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 and it is obligatory to provide adequate air pollution control facility to avoid emission and nuisance in the surrounding area.

In compliance of the order dated 24.02.2014 passed by the National Green Tribunal and in exercise of the powers conferred under Section 33(A) of the Water (Prevention & Control of Pollution) Act, 1974 and under Section 31A of the Air (Prevention & Control of Pollution) Act, 1981, the direction was issued by the Regional Officer of MPCB to the petitioner to stop the brick-kiln activities immediately and the concerned authorities were directed to disconnect the electricity/ water supply connections of the petitioner.

16. It is not in dispute that in furtherance of the said directions of the MPCB, the petitioner stopped operation of the brick-kiln, but on an application being moved to the National Green Tribunal, the Tribunal

passed the order on 19.02.2015 where, the MPCB undertook before the Tribunal that it shall consider the application filed by the petitioner independently since the brick-kiln of the petitioner was closed down. The Tribunal also directed the MPCB to give due publicity to the prescribed standards and also its decision to bring clamp type bricks in consent management regime and ensure compliance.

17. The aforesaid order/ direction by the National Green Tribunal did not, however, direct the withdrawing of the NA permission, since the Tribunal itself has directed that the application of the petitioner to be considered by the MPCB as per the applicable norms. While the application was pending before the MPCB, it was not open for the Tahasildar to cancel the NA permission as the petitioner has not given up her claim for operating the brick-kiln, subject to the approval from the MPCB. In the wake of the aforesaid facts, the Tahasildar has hastily passed the impugned order cancelling the NA permission, which is highly arbitrary as the proposal of the petitioner for operation of the brick-kiln was pending before the MPCB.

18. In the wake of the above, the impugned order of the Tahasildar is highly arbitrary and it is pertinent to note that since there is no NA permission, the MPCB will be precluded from considering the application of the petitioner for operation of the brick-kiln subject to compliance of necessary requirements about emissions and pollution.

Since the impugned order apparently appears to be passed at the behest of the disgruntle element and it did not fit within the parameters of law and particularly when cancellation of NA permission is unilateral decision of the Tahasildar without justifying it's existence, the same is quashed and set aside. The Writ Petition is allowed in the aforesaid terms. Rule is made absolute accordingly.

kps

(SMT. BHARATI H. DANGRE, J.)