

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2100/2021

Gopal S/o Babulal Agrawal,
Aged about 55 years, Occ: Business,
R/o At present Muktanand Nagar, Near Dr.Gaikwad
Hospital, Nandura road, Khamgaon, Tq. Khamgaon,
District Buldana.

PETITIONER

.....VERSUS.....

1. Divisional Commissioner,
Amravati Division, Amravati.
2. District Collector, Buldana.
3. Narendra S/o Babulal Joshi,
Aged about 48 years, Occ: Advocate,
r/o Main Road, Khamgaon, Tq. Khamgaon,
District Buldana.
4. The Controller of Explosives, West Circle,
Petroleum and Explosive Safety Organization (PESO)
A1 A2 Wing, 5th Floor, CGO Complex,
CBD Belapur, Mumbai-400614.

RESPONDENTS

Mrs. Renuka S. Sirpurkar, counsel for the petitioner.
Ms Nivedita P. Mehta, Assistant Government Pleader for the respondent nos.1
and 2.
Shri Anil S. Mardikar, Senior Advocate with Shri S.G. Joshi, counsel for the
respondent no.3.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : 28TH JANUARY, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The challenge raised in this writ petition is to the orders dated 18.11.2020 passed by the Collector and District Magistrate, Buldana and the order dated 07.06.2021 passed by the Divisional Commissioner, Amravati Division, Amravati in proceedings arising out of the Explosives Act, 1884 (for short, 'the Act of 1884'). The District Magistrate has been pleased to cancel the no objection certificate dated 17.03.1997 that was granted to the petitioner for storage and sale of explosives. The Divisional Commissioner was pleased to confirm that order and further directed appropriate action to be taken under the provisions of Sections 44 and 45 of the Maharashtra Land Revenue Code, 1966 and the Maharashtra Land Revenue (Conversion of use of Land and Non-Agricultural Assessment) Rules, 1969.

3. Brief facts giving rise to the present proceedings are that it is the case of the petitioner that pursuant to grant of no objection certificate by the Additional District Magistrate, Buldana on 17.03.1997 the petitioner is operating fire cracker shops/godowns on Survey No.86 at Mouza Shirajgaon, Taluka Khamgaon, District Buldana. It is the case of the petitioner that he has been running the aforesaid business since then without any interruption. On 10.10.2018 the respondent no.3 moved an application before the District Magistrate praying therein that since the aforesaid business was being carried out by the petitioner in breach of the

provisions of the Explosives Rules, 2008 (for short, 'the Rules of 2008'), the no objection certificate granted in favour of the petitioner be cancelled. Pursuant thereto the District Magistrate on 17.10.2018 issued a notice to the petitioner and sought his clarification on various aspects stated in the said notice. It appears that on 29.10.2018 the explosives godowns were inspected. During the course of inspection, various shortcomings were noticed and hence on 31.10.2018 the District Magistrate issued a show cause notice to the petitioner calling upon him to explain as to why the no objection certificate granted earlier should not be cancelled. The petitioner was called upon to show cause by 03.11.2018. The petitioner accordingly submitted his reply and thereafter by an order dated 18.11.2019 the District Magistrate found that the land in question had not been converted for non-agricultural use. The District Magistrate found it fit to seek further guidance in the matter from the Controller of Explosives and he directed that till such guidance was received the petitioner's godown be sealed. The appeal filed by the petitioner challenging that order before the Divisional Commissioner came to be dismissed on 17.03.2020. The Divisional Commissioner however directed the District Magistrate to examine as to whether appropriate permission has been granted for non-agricultural use of the land where the business of the petitioner was being conducted. The petitioner being aggrieved by the aforesaid orders approached this Court

in Writ Petition No.1802 of 2020. On 17.09.2020 this Court found that the action of sealing the godown was not relatable to any provision under the Act of 1884 or the Rules of 2008. Consequently, the orders passed in that regard came to be set aside and liberty was granted to the District Magistrate to move the appropriate Authority under the Act of 1884 for taking the appropriate action if found necessary.

4. The District Magistrate however acting on the directions issued by the Divisional Commissioner by which the aspect of conversion of the land for non-agricultural use was directed to be examined re-opened the matter and after hearing the petitioner as well as the respondent no.3 cancelled the no objection certificate issued to the petitioner principally on the ground that the land where the godowns were situated had not been converted for non-agricultural use and the user of that land for storage of explosives was not permissible under the Regional Development Scheme. The Explosives Department was accordingly informed about the same. The petitioner then filed an appeal before the Divisional Commissioner who on 07.06.2021 was pleased to affirm the order of revocation of the no objection certificate. The appeal was accordingly dismissed and further directions were issued to take action under the provisions of the Maharashtra Land Revenue Code, 1966. Being aggrieved the petitioner has challenged the aforesaid orders.

5. Smt.Renuka Sirpurkar, learned counsel for the petitioner in support of the writ petition submitted that the District Magistrate as well as the Divisional Commissioner mechanically proceeded to cancel the no objection certificate without taking into consideration the relevant applicable provisions of the Act of 1884 and the Rules of 2008. Referring to the scheme of the Rules of 2008 in the matter of grant of no objection certificate it was submitted that on 17.03.1997 the no objection certificate had been granted to the petitioner after following the prescribed procedure. Since some of the godowns were situated on portions of land falling within the same survey number it was not necessary for the petitioner to obtain a fresh no objection certificate in that regard in view of Rule 102(2)(b) of the Rules of 2008. Referring to the provisions of Rule 115 it was submitted that cancellation of the no objection certificate was permissible only on the occurrence of the contingencies prescribed therein. She submitted that none of the grounds mentioned in Rule 115(1) were existing for the District Magistrate to cancel the no objection certificate. Attention was invited to the communication dated 15.05.2020 issued by the Joint Chief Controller of Explosives to the District Magistrate in that regard. The impugned orders had been passed without considering the relevant record and were liable to be set aside. It was submitted that this Court in Writ Petition No.1802 of 2020 having set aside the orders dated 18.11.2019 and 17.03.2020 it

was not permissible for the District Magistrate to take into consideration the material that was collected during those proceedings for the present adjudication. It was therefore not permissible for the District Magistrate to have cancelled the no objection certificate on the basis of such material. Various grounds were raised before the Divisional Commissioner for challenging the said order. Without adverting to those grounds, the order had been confirmed by the Divisional Commissioner without considering the relevant aspects. It was also submitted that the respondent no.3 had no *locus* to raise the grievance to the running of the fire cracker godowns by the petitioner. On these counts, it was submitted that the impugned orders were liable to be set aside.

6. Ms Nivedita Mehta, learned Assistant Government Pleader for the respondent nos.1 and 2 supported the impugned orders. It was submitted that the no objection certificate dated 17.03.1997 was rightly cancelled as the petitioner was operating the godowns from land which was not converted for non-agricultural use. Considering the aspect of safety of citizens, the action taken was relatable to Rule 115(1)(c) of the Rules of 2008. The impugned action was taken after giving the full opportunity to the petitioner to put forth his say. After considering all relevant material since it was found that the godowns were being run on land which had not been converted for non-agricultural use the action of cancellation as

taken was legal and valid not requiring any interference. Reliance was placed on the affidavits filed by the respondent no.2 on record.

7. Shri Anil Mardikar, learned Senior Advocate for the respondent no.3 also supported the impugned orders. According to him on a complete reading of the order passed by the District Magistrate as confirmed by the Divisional Commissioner it was clear that the Authorities had taken into consideration the aspect of public safety while cancelling the no objection certificate. Though restricted permission was initially granted on 17.03.1997 to run the godown the petitioner expanded his business without converting the land for non-agricultural use. After noticing the provisions of the Maharashtra Land Revenue Code, 1966 the District Magistrate rightly took steps for cancelling the no objection certificate. Such action was in view of Rule 115(1)(c) of the Rules of 2008. As the Authorities had given importance to the aspect of public safety and the impugned orders had been passed after granting due opportunity to the petitioner there was no reason to interfere with the said orders. He further submitted that the respondent no.3 as a vigilant citizen was entitled to bring to the notice of the Authorities any breach of conditions on which the no objection certificate was granted and seek its cancellation. It was thus submitted that no case for interference in writ jurisdiction was made out.

8. We have heard the learned counsel for the parties at length and with their assistance we have perused the documents placed on record. The challenge raised is to the cancellation of the no objection certificate that was granted to the petitioner to store and sell explosives. This no objection certificate was issued under the Rules of 2008. The decision of the District Magistrate to cancel that no objection certificate and consequent affirmation of that decision by the Divisional Commissioner is under challenge. In matters of this nature, the Court in exercise of writ jurisdiction would primarily be concerned with the decision making process rather than the decision itself. In other words, if it is shown that the Authorities have arrived at their conclusion after granting due opportunity to the parties and on consideration of all relevant aspects the scope to interfere with such adjudication would be limited. The Court would be slow to interfere with the actual decision if all necessary safeguards have been complied with. If however the decision making process is shown to be flawed or that irrelevant aspects have been taken into consideration while taking the decision a case for interference would be made out. It is in the aforesaid backdrop that the challenge to the impugned orders would have to be examined.

9. The issuance of the no objection certificate to the petitioner for storage and sale of explosives on 17.03.1997 is not in dispute. Pursuant

to the complaint made by the respondent no.3, the District Magistrate issued a show cause notice. Perusal of the said show cause notice dated 31.10.2018 indicates that reference has been made to nine licenses that were granted to the petitioner and storage of explosives was undertaken in nine such godowns. With regard to each license, identical deficiencies have been noticed. These deficiencies broadly are that (a) the explosives stored in the godown exceeded the permissible capacity and during inspection it was found that the stock was not maintained in proper manner; (b) the yellow and red marking in the godown was either not made or where red marking was made the goods were stored beyond the same; (c) the electricity lines were touching the roof as well as the stock of explosives; (d) the fire prevention equipment was not working and the water tank was empty; and (e) there was no security guard for the godown. These deficiencies have been noted for all the licenses except license No.3 where the deficiency with regard to the absence of security guard was not found. By referring to these deficiencies the District Magistrate has observed that there was likelihood of fire breaking out. As the petitioner failed to follow necessary terms and conditions of the no objection certificate, the same was liable to be cancelled. It is thus clear from the show cause notice that specific deficiencies were mentioned against each license and the petitioner's explanation was sought. The petitioner in his reply dated 14.11.2018 has denied the presence of such

deficiencies and has given his clarification. He has also referred to Rule 102(2)(b) of the Rules of 2008 and has further stated that the no objection certificate was not liable to be cancelled.

10. We find that neither the District Magistrate nor the Divisional Commissioner have adverted to the various deficiencies that were referred to in the show cause notice dated 31.10.2018. Perusal of the order dated 18.11.2020 passed by the District Magistrate indicates that the entire thrust of the said order is on the absence of permission for non-agricultural use being obtained by the petitioner. After finding absence of such permission and the fact that use of the godown for storage of explosives was not permissible within limits of two kilometers from the Gaothan/Village, action of cancellation of the no objection certificate has been taken. The Divisional Commissioner in turn has affirmed that action by his order dated 07.06.2021. As stated above for each of the nine licenses except one, similar deficiencies were found. The proceedings for cancellation of the no objection certificate having commenced on the basis of that show cause notice, it was expected of the District Magistrate and thereafter the Divisional Commissioner to have considered the deficiencies referred to in the show cause notice, petitioner's response to the show cause notice and further action in that regard. The impugned orders do not indicate any consideration of the deficiencies referred to in

the show cause notice or the petitioner's reply in that context. On this sole count that the Authorities have cancelled the no objection certificate on the basis of material that was not part of the show cause notice, the impugned orders are liable to be set aside.

11. We find that the District Magistrate and thereafter the Divisional Commissioner have noticed absence of due permission being obtained for non-agricultural use of the lands where the godowns were situated. No doubt, being Authorities under the Maharashtra Land Revenue Code, 1966, the District Magistrate and thereafter the Divisional Commissioner had the jurisdiction to go into the said aspect. However before going into that matter the petitioner ought to have been noticed in that regard and his response to the allegation that there was no permission for non-agricultural use of the land ought to have been obtained. No such notice was given to the petitioner. On the contrary without considering the deficiencies mentioned in the show cause notice dated 31.10.2018 and the petitioner's response to the same, the no objection certificate has been cancelled for a different reason. Such course of action would be impermissible. The Authorities have held against the petitioner by relying upon grounds of which no notice was given to the petitioner. It was not permissible for the Authorities to travel beyond the show cause notice and consider aspects that were foreign to it thus taking the

petitioner by surprise. It was always open for the Authorities to indicate the action proposed consequent to absence of such permission for non-agricultural use. The District Magistrate issued notice indicating deficiencies under the Rules of 2008 but cancelled the no objection certificate for absence of permission for conversion of the land for non-agricultural use. This course is not in accordance with law and thus the impugned orders cannot be sustained.

12. Though it was sought to be urged by the respondents that the Authorities have acted by keeping public safety in mind that by itself cannot assist the respondents in salvaging their position in the present matter. The Authorities are obliged to act in accordance with law and by keeping public safety in mind. The action proposed would however have to be preceded by giving appropriate notice and opportunity to the party likely to be affected. For the aforesaid reasons therefore we are unable to sustain the impugned orders. We accordingly pass the following order:

- (I) The order dated 18.11.2020 passed by the Collector and District Magistrate, Buldana and the order dated 07.06.2021 passed by the Divisional Commissioner, Amravati Division, Amravati is set aside.
- (II) The District Magistrate, Buldana is free to proceed in accordance with law pursuant to the show cause notice dated 31.10.2018. The petitioner is at liberty to file additional reply to the aforesaid show cause notice, if so advised.

- (III) The Authorities are free to take necessary action in accordance with the Explosives Rules, 2008 and/or the Maharashtra Land Revenue Code, 1966 after granting due opportunity to the petitioner.
- (IV) Considering the fact that the proceedings are pending since long, the District Magistrate shall take appropriate steps in accordance with law expeditiously.
- (V) All points raised by the petitioner as well as the respondent no.3 on merits are kept open.

13. Rule is made absolute in aforesaid terms. No costs.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)

APTE