

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4523 OF 2022

Shital Prabhakar Chandane

Age: 43 years, Occ: Business

Residing at 101/202, Kumar Parisar, D.P. Road,

Near Gandhi Bhawan, Kothrud,

Pune 411038

...Petitioner

Versus

The State of Maharashtra

(through the Secretary, Revenue Department,

Mantralaya, Mumbai

2. The Collector, Sangli
having office at Sangli,

3. The Deputy Collector, (Rehabilitation)
Having office at Sangli,

4. Sub Divisional Officer, Vita Division, Vita
District Sangli

5. The Superintending Engineer,
Sangli Irrigation, Sangli having office at
Warnali Vasahat, Vishram Bag, Sangli

...Respondents

Mr. Laxman Deshmukh with Mr. Ranjeet Patil Advocates for the
Petitioner.

Mr. N.C. Walimbe, Addl. G.P. with Mr. N.K. Rajpurohit , Assistant
Government Pleader for the Respondent Nos. 1 to 4/State.

Mr. Tapan Thatte Advocate for Respondent No.5.

**CORAM : A.S.CHANDURKAR AND
M.M. SATHAYE, JJ.**

DATE : 3rd FEBRUARY 2025

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JUDGMENT (Per M.M.SATHAYE, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the parties.

2. The Petitioner is challenging the communications dated 09.11.2021 and 15.11.2021 issued by Respondent Nos. 3 and 4 and for direction to the said Authorities to issue permission for conversion of subject land bearing Gat No. 2700 admeasuring 8 H 84 R situated at Atpadi, Tal. Atpadi, District Sangli into Non Agricultural ('NA for short') industrial use without insisting for payment of 'irrigation restoration charges'

3. Few facts necessary for disposal of the petition are as under. The Petitioner claims to be the owner of the subject matter land. As the Petitioner desired to change the use of the subject land and convert it to NA (industrial) use for construction of cold storage and agricultural related business, he applied on 04.02.2021 to Respondent No.4 under Section 44 of the Maharashtra Land Revenue Code, 1966 ('MLRC' for short) and submitted necessary documents. Respondent No.5 vide its letter dated 04.06.2021 directed the Petitioner to submit further documents and pursuant thereto, the Petitioner applied for Non Objection Certificates ('NOC' for short) of various departments. One of the NOC required was of Respondent No.5. According to the Petitioner, the Water Resources Department has laid down certain procedure under Government Resolution (GR) dated 06.03.2009 for issuance of NOC for which, charge per hectare is levied towards expenses of irrigation restoration. Vide Circular dated 03.06.2021, Respondent No.1 reviewed

this policy and it was decided 'not to charge and recover' the same for issuance of NOC. Under the earlier policy, a charge of Rs.1 lakh per hectare was levied. The Petitioner applied for NOC on 22.06.2021 of Respondent No.5, who vide its letter dated 02.07.2021 issued NOC, without charging for the 'irrigation restoration'. NOC from Respondent No.3 was not issued within reasonable period. In the meantime, vide Circular dated 11.08.2021, the policy was again revised and earlier policy was restored, thereby again deciding to impose 'irrigation restoration charges' in terms of earlier Circular dated 06.03.2009. Accordingly, by impugned communication dated 09.11.2021, NOC was issued subject to condition of payment of irrigation restoration charges in terms of Circular dated 11.08.2021. Similarly, by impugned communication dated 15.11.2021, Respondent No.4 directed the Petitioner to pay the said charges, recording that only after such deposit, further action for grant of permission will be taken. In these circumstances, the Petitioner has approached this Court.

4. Learned Counsel for the Petitioner submitted that many agriculturists in the State of Maharashtra have taken benefit of Circular dated 03.06.2021 under which NOC was granted without recovering irrigation restoration charges. It is submitted that NOC was issued vide letter dated 02.07.2021 / 05.07.2021 when the policy was revised and charges were not payable.

5. Learned Additional Government Pleader by referring to Affidavits-in-Reply dated 27.07.2022, 30.08.2022, submitted that when the Petitioner had applied on 23.06.2020 for permission to use the subject matter land for NA purpose, the GR dated 06.03.2009 was in operation, which was canceled on 03.06.2021, but it was subsequently

restored by Circular dated 11.08.2021. It is submitted that since on the date of application, the GR dated 06.03.2009 was in operation, the impugned communications are legal and valid. It is submitted that though a decision was taken for waiving of irrigation restoration charges for some time, it was reconsidered and as a policy decision, it was reintroduced for the purpose of recovery of expenditure incurred for developing command area on land acquisition, rehabilitation, construction etc. from beneficiaries of NA orders.

6. Learned counsel for the Respondent No. 5, by referring to Affidavit-in-Reply dated 06.09.2023, opposed the petition. The said Affidavit-in-Reply indicates that the information asked by this Court under order dated 17.08.2023 about number of applications for conversion to NA land between 03.06.2021 to 11.08.2021 and number of owners benefited from the withdrawal of said charges in the interregnum along with names of beneficiaries, is not available with Respondent No.5 and therefore, was not furnished. Be that as it may.

7. We have heard considered rival submissions and perused the record. Legal question is whether the policy existing on the date of application would apply or policy existing on the date of decision would apply. Admittedly, the decision was taken on 02.07.2021 or 05.07.2021 not to recover the irrigation restoration charges as per Circular dated 03.06.2021. Admittedly, thereafter the policy has been re-visited on 11.08.2021. In ***State of Kerala and Anr. v/s. B. Six Holidays Resorts Pvt. Ltd. And Ors. - (2010) 5 SCC 186***, relied upon by the Petitioner, the Hon'ble Supreme Court was considering similar issue about relevant date for application of Rules. Para 16(i) of the said Judgment reads thus:

“16. (i) Whether an application for grant of FL-3 licence should be considered with reference to the Rules as they existed when the application was made or in accordance with the Rules in force on the date of consideration?”

The Hon'ble Supreme Court has held that this question is directly covered by the decision of the Supreme Court in ***Kuldeep Singh v/s Govt of NCT of Delhi - (2006) 5 SCC 702***, that the policy that would be applicable will be the one which is prevalent on the date of decision and not the one prevalent on the date of application.

8. The facts of the present case are similar in nature and therefore, in our view, the date on which the decision was taken to issue NOC to the Petitioner would be relevant and policy as it existed on that date will be applicable. Since, on 02.07.2021 or 05.07.2021, the Circular dated 03.06.2021 was in operation which waived the concerned charges, the same will apply. Therefore the petition succeeds to that extent.

9. Hence, we pass the following order :

(i) The impugned communications dated 09.11.2021 and 15.11.2021 issued by Respondent Nos. 3 & 4 are quashed and set aside.

(ii) The Petitioner would be liable to pay requisite charges in accordance with the policy that was prevailing on 02.07.2021, when Respondent No.5 made the necessary recommendation in favour of the Petitioner and as on 05.07.2021 when the Executive Engineer issued No Objection Certificate.

(iii) Rule is made absolute in the aforesaid terms. No order as to costs.

(iv) All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)

(A.S.CHANDURKAR, J.)