

NA ORDER PROCEDURE

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ABSTRACT

Land can be called non-agricultural land, if any activity in nature of development is carried over on the land which makes land unfit for cultivation. Before carrying out any development on the land, an eligible person has to apply to collector for permission to covert the use of agricultural land for any non-agriculture purpose, or to change the use of land from one non-agricultural purpose to another non-agricultural purpose.

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I. INTRODUCTION

Agricultural lands are typically lands devoted for agricultural activities. it is, thus synonymous with farmland and cropland. It is strictly forbidden to construct a residential or commercial estate upon agriculture lands. Non-farmers are not eligible to buy agricultural land in India. The area is primarily engaged in agricultural activity are also categorized into green zone (G-zone) according to the government of Maharashtra, buying an agricultural plot less than 11,000 sq.ft. Will not be considered legal and therefore no sale-deed or 7/12 extract will be issued.

Before carrying out any development on the agricultural land, the person has to apply to the collector for the permission to convert the use of agricultural land foe any Non Agricultural land purpose after converting the agricultural purpose. After converting the agricultural land into NA plots, it becomes easier to receive permission for construction from the local governing bodies

II. PROCEDURE

The applicant can apply for non-agricultural permission for any one of the three stipulations mention thereunder:

1. To change the use of land assessed or held for the purpose of agricultural for a non-agricultural purpose.
2. To change use of land held or assessed for non-agricultural purpose for some another non-agricultural purpose.
3. To use the land for the same non-agricultural purpose for which it is assessed but in relaxation of any of the conditions imposed at the time of grant of land or permission for such non-agricultural purpose. The case can be processed only if the submission is substantiated with various documents as under:
 - a. 7/12 or record or rights of the proposed lands in original x 4 copies.
 - b. 6-A mutation entries in originals x each 4 copies.

- c. 8-A Khate Utara in originals x each 4 copies.
- d. Gut book plan of the concern land issued and certified by the district inspector of land records x 4 copies.
- e. Certified measurement plan of the land survey from district inspector of land records x 4 copies.
- f. Layout plan showing internal roads, open spaces, etc. duly signed by the applicant and the architect x 8 copies.
- g. Registration certificate of the architect x 2 copies.
- h. Appointment letter for the architect x 1 copy.
- i. Complete revenue search for at least 30 years x 4 sets.
- j. Power of attorney for the constituted attorney if appointed by the land holders x 2 copies.
- k. Grant in right of way documents if access road is obtained from the adjoining owners x 2 copies.
- l. NA application in prescribed form x 4 copies.
- m. N.O.C. from local authority for conversion of land used x 2 copies.
- n. N.O.C. from land acquisition department.
- o. N.O.C from pollution board for industrial NA.
- p. Authentic documents to prove existence of adequate water source.
- q. Provisions to be adopted for sewage, drainage and disposal system.
- r. Provisions for adequate infrastructure in the case of vast layouts.
- s. “sales permissions” for tenanted lands under layout.

The application can be returned back if the applicant is unauthorised signatory or if the submission is incomplete for want of some documents.

The competent Revenue Authority (The Collector, S.D.O. or Tahsildar as the case may be) will initiate proper inquiry through Circle officer of the area for on the spot study of the site to verify the applicants and inspect the site in detail. His report will include written statement endorsed by the applicant and the Architect . The positive site inspection report from the Circle Officer should confirm that the land is vacant and there are no structure. He shall also note the alignment of high tension electrical lines passing above the lands. Any dispute regarding ownership of the land will come to surface during joint site inspection of the site by the Circle officer.

During the process of granting permission for nonagricultural use complete revenue record of the concerned land shall be thoroughly scrutinized and the permission can never be granted if discrepancies are detected in earlier transfers of occupancy. If a fraud is detected in previous transfers it shall be construed that all the subsequent transfers thereafter are invalid. However irregularities in areas can be rectified by actual survey on site through D.I.L.R and otherways.

The competent authority i.e. the Collector or the Sub – Divisional Officer or the Tahsildar as the case may be will forward the case papers to the relevant planning authority of the area such as Asst. Director of Town Planning (A.D.T.P.) or BM.R.ED.A. or CIDCO etc. for recommendation whether the proposed nonagricultural use can be allowed or not ? The concerned Planning Authority shall scrutinize the case in detail to ascertain if all the stipulated Development Control Rules are followed or not and shall base their report on the following assertions viz (1) security of Public Health (2_) Contradiction of planned scheme of the area (2) Contradiction

of planned scheme of the area (3) Balanced Development (4) Area verifications (5) Availability of infrastructure (6) proposed infrastructure in the schemes etc. At this juncture it is interesting to state that competent Revenue Authority is sufficiently authorised to sanction N.A. Permission inspite of having some objections from the Planning Authority. The consultation of the Planning Authority. The consultation of the Planning Authority is mandatory but the final decision under discretionary powers is with the Competent Authority. In various cases, sometimes Planing Authority is too rigid to apprehend the substance of Planning Concept in relation with the vicinity around and the needs of the people by raising non-practical and vogue objections., The applicant is eligible to refer his case in Appeal to the Direct of town Planning Office for Maharashtra in Pune, if the case is rejected. In such cases till the final decision is arrived the application for N.A shall remain pending.

The case papers shall also be forward to the Land Acquisition Department to verify that the proposed lands under N.A. are not included in the Land Acquisition by the Government; if so N.A. Permission can never be pending.

For Industrial N.A. use case papers shall also go to various Government officers for verification regarding protection form air and water pollution and ecology. If the proposed land in full or part is obtained under “The Bombay Tenancy and Agricultural Lands Act, 1948, obtaining of “Sale Permission” from the competent Authority is an absolute must before granting N.A. Permission. Let me raise a point here that procurement of sale permission in itself is a vast subject and requires tremendous professional expertise and knowledge of the prevalent land enactments.

The position of tribal lands is very ambiguous. All occupancies of Tribals transferred in favour of non tribals after 6th July 1974 shall be liable for prosecution under the Maharashtra Land (Amendment) Act, 1974 orgenerally known as Maharashtra Act XXXV of 1974.

Similarly all the transfers and adiwasi lands to non-tribals affected during the period from 1st April 1957 to 6th July 1974 shall be read with according the to “The Maharashtra Restoration of Lands to scheduled Tribals act, 1975 which is known as Maharashtra Act No. xiv of 1975. But however the non tribal transferee can succeed if the land in question has been put to any non agricultural use on or before the 6th July 1974. It is generally believed that if no reply is given by the Authority to the Applicant within 90 days from the date of acknowledgement of the application the N.A. permission shall be deemed to hve been granted. If all conditions are fulfilled under section 44(3) of the M.L.R.C. 1966, the permission is deemed to have been granted. It is not in reality granted but the Act of Legislature treats that it is granted. The applicant is not liable to any fine or penalty under undersection45.

The levy of Non Agricultural assessment begin from the day on which nonagricultural use begins and not from the date of permission. The commencement of N.A. use is not elaborated in the Code. But it is a question of fact and interpretation. The applicant should sincerely exert himself after obtaining N.A. Permission by operations like leveling, developing or reclaiming the land, Constructing internal roads, drainage etc., thus altering the outlook of the land so as to render it unsuitable for agriculture. The above operations are adequate to establish that N.A. use has commenced. It is not necessary that Building construction activity shall not started to commence N.A. use.

If the applicant fails to inform within one month his commencement of N.A. use he shall be liable to pay fine in

addition to N.A. Assessment but such fine shall not exceed Rs. Five Hundred only as per section 44 (5) of the code.

The applicant shall be commence that non agricultural use applied for within one year from the date of the order; failing which, unless the said period is extended by the Collector from time to time, the permission granted shall be deemed to have lapsed as per rule 4 (c) of the M.L.R. (Concretion of use of land and nonagricultural assessment) rules,1969.

As per section 44(6) of the code after the change in land use a sand shall be granted to the holder in the form in schedule IV if the land is situated outside the jurisdiction of the Planning Authority and in Schedule V if the land is situated within the jurisdiction of the Planning Authority. If the applicant fails to appear before the Collector for execution of sanad within a reasonable time, a notice can be issued to him to the effect that such act of non execution of sanad would entail cancellation of N.A. permission already granted. The Government is no authorised to alter very or cancel the terms and conditions of a sanad once they are agreed upon between the Government and the occupant, as the sanad is executed by the Collector on behalf of the Governor under Article 299 of the Constitution and it constitutes a contractual obligation. But if the sanad is executed by the collector in his capacity as a revenue officer in exercise of his statutory obligation in favour of private parties; thus Government of revenue officers are empowered to vary; amend or cancel the terms and conditions of the sanad.

Conversion of agricultural use into nonagricultural use without permission is bad in law but a nonagricultural land may be used for agricultural purpose without any permission unless such agricultural use is prohibited under section 43 of M.L.R. Code1966.

The Collector is bound to give reasons in writing of refusal of N.A. Permission under section 42 of the code to the applicant. On refusal the applicant is entitled for only ONE appeal under section 247 of the code to the Divisional commissioner.

The Government has power Su motto to revise orders passed by the collator for some specific cause involving public interest even if sanad is executed creating contractual obligation .In such a case the aggrieved party is liable to get appropriate compensation against the cost incurred in setting up the project by commencing N.A. use.

The Regularization of unauthorised use is covered by rule 9 f the Maharashtra Land Revenue (conversion of use of land Non Agricultural Assessment) Rules 1969. For unauthorised use of land in contravention of the provisions of section 44 of the code if the Collector is satisfied that had the holder applied for necessary permission under relevant section his application would have been sanctioned and if it is within the jurisdiction of the planning Authority the unauthorised nonagricultural use can be regularised under rule 9 of the following conditions:

- (1) The holder shall pay the amount of conversion tax leviable under section 47A within 30 days from the date of regularization and shall pay nonagricultural assessment from the very commencement of the use.
- (11) The holder shall pay fine not exceeding forty times the N.A. Assessment.
- (iii) That the holder shall abide by the conditions specified in Rule 4 and such other conditions as the Collect or may deem fit to impose. However if the unauthorised N.A. use is not possible to be regularised under Rule 9 as described above, and if the Collector is convinced planning Authority with the sanction of the State

Government may allow the constructions to remain under Rule 10 subject to the conditions (i) and (iii) in preceding rule 9 and with additional conditions as follows :

(a) Holder to pay composition fee not less than fifty percent of the cost incurred on the offending unauthorised construction or 40 times the N.A. assessment payable on the land with reference to the altered use, whichever is greater and (b) the holder shall agree in writing to demolish the offending unauthorised construction without claiming compensation whenever asked to do so in the public interest, failing which the Collector shall do so at the holder's risk and costs.

In exceptional cases the Collector may with the sanction of the State Government reduce the amount of composition fee payable by the holder under conditions (a) of Rule 10 as enumerated here in above if the Collector is convinced about (i) the financial inability of the holder causing him undue hardship and (ii) if the offending unauthorised construction was not constructed by the holder with the knowledge that it was unauthorised.

The holder is eligible for the grant of a sanad from the Collector if his unauthorised non-agricultural use is permitted to be continued under Rule 9 or 10 of the "The Maharashtra Land Revenue" (conversion of use to of land under Nonagricultural Assessments) Rules, 1969.

III. CONCLUSIONS

- i) Before buying any property, it is essential to first focus on one's own requirements. No doubt a NA plot has the advantage of assuring big returns on investment, but it usually needs investment in full term and there is no choice of taking leverage on the fund. On the other hand, buying a flat is very easy so that an investor can take leverage on its fund.
- ii) Before conforming to buy a NA Plot, it is advisable to get all the documents to be checked by a lawyer to ensure they are original and have no flaws, in order to protect yourself from fake registration and from properties that are stuck in court litigation. Apart from the documentation it is also important to check for the connectivity of the plot and ensure that the property is not isolated, its proximity to basic necessities such as, schools, colleges, market, hospitals, transportation, entertainment, etc.
- iii) Buying a plot and constructing your own house is more satisfying since, the owner of the house is involved in every step of the construction process and everything is done as per your choices and preferences.

REFERENCES

- [1.] PWD hand book 2016-17
- [2.] Town Planning hand book 2016-17
- [3.] Municipal council Handbook 2016-17