

Regarding no need of permission under Section 42 and 44 of Maharashtra Land Revenue Code, 1966 for non-agricultural use of land situated in area included in the Development Plan and to determine clarity in action, work procedure and responsibility in that context ...

GOVERNMENT OF MAHARASHTRA

REVENUE AND FOREST DEPARTMENT

GOVERNMENT RESOLUTION NO.: NAP-2016/CASE NO.7/T-1

Main Building, First Floor, Madam Cama Road, Hutatma Rajguru Square,

Mantralaya, Mumbai-400032

Date: 22 January, 2016

READ: Maharashtra Land Revenue Code, 1966 (Second Amendment) Act, 2014 [Maharashtra Act 37/2014]

INTRODUCTION: -

There is a provision in Section 42 of Maharashtra Land Revenue code, 1966 that no agricultural land can be used for non-agricultural purposes without the permission of concerned District Collector and vide Section 44 a 90 days time limit has been stipulated for taking decision on applications received for conversion of land use from one purpose to another and the work procedure to be followed for it. However, there has been a general public perception that delay occurs in getting permission for non-agricultural uses at regional level under Section 42 and 44 of Maharashtra Land Revenue Code, 1966.

Therefore, by promulgating Maharashtra Ordinance No. 17 on 22/08/2014 in this context and by including a new "Section 42 A" after Section 42 of Maharashtra Land Revenue Code, 1966, a provision was made vide said Section 42 A, that there will be no need to obtain non-agricultural permission as per Section 42 to effect a change in the use of land as given in the draft development plan prepared according to provisions of Maharashtra Regional and Town Planning Act, 1966 or in the use as determined in the final development plan.

Subsequently, the said amendment brought in through an ordinance dated 22/08/2014 was included in Maharashtra Land Revenue Code, 1966 vide Maharashtra Act No. 37/2014 as published in Government Gazetteer dated 22/12/2014. In this context, taking into account the

difficulties faced by area officers and the public while implementing the said new amendment, the matter of bringing clarity in the work procedure was under consideration of government.

GOVERNMENT RESOLUTION: -

With a view to bring about rationalization and effectiveness in the implementation of newly included **Section 42 A** in Maharashtra Land Revenue Code, 1966 vide Maharashtra Act 37/2014, the onward mentioned directives are being issued on the basis of **powers vested in the government according to Section 13 (7) of Maharashtra Land Revenue Code, 1966.**

- 1.1. According to Section **42 A (1) (A)** of Maharashtra Land revenue Code, 1966, regarding usage of land in draft development plan or final developed plan as prepared vide provisions of Maharashtra Regional and Town Planning Act, 1966, there is no need of prior permission of District Collector in changing the use of land possessed as **Occupant-Class One**. However, provision is made that before issuing permission in such cases the concerned planning authority will ascertain from the concerned revenue authority the **Class, Occupancy and likewise the load of the land** whose use is being changed and after the ascertainment is made, the planning authority will issue permission as per provisions of Maharashtra Regional and Town Planning act, 1966.

- 1.2. It has come to the notice of government that difficulties are being faced at regional level in the implementation of above amendment because in the said provisions of the Act there is no clear cut mention of exactly from which revenue authority, the planning authority should make enquiry about the class of land, its occupancy and its load and in what time period should such revenue officer make available the above said information to planning authority. Taking that into account the government wishes to make it clear that since the primary responsibility of maintaining records of land in rural area in good condition and likewise of updating said records from time to time is that of concerned taluka level Tehsildar, in accordance with the provisions of **Section 42 A(1)(A)** the concerned planning authority should make inquiry in **this regard about class, occupancy and likewise load on land of Occupant of class-one** with the Tehsildar of that taluka where the land of the applicant having ownership right of **Occupancy-class one** land is situated.

- 1.3. After receipt of proposal from planning authority for ascertainment regarding development of land possessed under ownership of **Occupant-class one** or for a change in its present use, the concerned Tehsildar should ensure that the village form/specimen No. 7/12 of land under application is up to date and that no implementation of sanctioned mutation is pending, and make sure on the basis of updated village form No. 7/12, the class of land under application, its load and its occupancy. Although the entries in record of rights and in mutation register are not finally decisive in regard to ownership rights of land, vide Section 157 of Maharashtra Land Revenue code, 1966, the existing entry is assumed to be true until it is proved that the entry in rights register and the certified entry in mutation register are contradictory to each other or until a new entry in that regard is submitted legally. Therefore, it is necessary that the concerned Tehsildar should provide to planning authority information about occupancy of land and its class on the basis of Record of Rights. Along with this the concerned Tehsildar is also expected to inform the planning authority, on the basis of revenue records, the controversial cases in mutation records in respect of land under application, or semi-judicial cases or judicial cases available in Talathi's office and Tehsildar's office and likewise the financial liabilities/burden of financial institutions on land under application etc.
- 1.4. While submitting the above information to planning authority, It should be clearly mentioned in it that as an ultimate outcome if it is proved in future that the land under application is under ownership right of **Occupant-class two** instead of **Occupant-class one**, it will be the responsibility of concerned occupant to deposit with government the said amounts subject to the concerned revenue authority making a demand of amount/presents (Najarana) payable to government as per rule or other amount payable to government, having taken into consideration current provisions and following prescribed procedure and the concerned occupant consents to this and that it will be compulsory for the planning authority to obtain this in writing in the nature of a indemnity bond from the concerned occupant.
- 1.5. Vide Section 42 A (1) (A) clear directives are herewith given that it will be obligatory on the concerned **Tehsildar** to make available in **"Appendix-A"** form, accompanying this government resolution, the information about **class of land, occupancy of land** and the

load on it etc. as above within **a time period of 30 days** from receipt of proposal from planning authority.

2.1. According to **Section 42 A (1) (B)** a provision has been made that in regard to land occupied as **Occupant-class two**, the planning authority **before giving development permission or before sanctioning change in use will direct the occupant of such land** to obtain no objection from the concerned District Collector. The definition of land of holding rights of **Occupant class-two** is given in **Section 29 (3)** of Maharashtra Land Revenue Code, 1966. In association with that, the following lands are also included in holding rights of occupant-class two.

- (1) Government lands conferred by government vide Section 31 of Maharashtra Land Revenue Code, 1966 for specific purpose according to Maharashtra Land Revenue (Disposal of government land) Rule, 1971 and lands allotted, as is where is, vide Mumbai Land Revenue Act, 1879.
- (2) Lands given to some institutions or individuals for occupation on being acquired under land acquisition act.
- (3) Lands allotted as per agricultural land and tenancy Act, various hereditary office acts, and Maharashtra Agricultural Land (Ceiling on Land Holding) Act, 1991.

In the context of lands mentioned above under No. (1) and (2) and likewise in the context of lands given by government on lease for specific purposes, if applications are received for development permission or change in use, the district collector, instead of giving no objection certificate at his level, should refer such cases to government.

In relation to above mentioned No.(3) if a request is received from concerned occupant for development permission or for change of use, the concerned district collector, having examined the related document by which such land has been re-allotted or the government resolution by which such land has been conferred/allotted on possession right or on lease rent and the related laws by which such lands are regulated, if a provision for change in use and related government policy is available and if it is admissible to give no objection certificate to occupant for change in use at

district collector level, the concerned district collector should direct the occupant to remit as per rules for such purposes the payable government share/presents out of the unearned income and other government payments. After the said payable unearned amount/presents and other government payments are deposited with government by those concerned, the district collector should give no-objection certificate for change in use of such land. In those cases where government or divisional commissioner are competent to permit change in use of land under application, the district collector should take care that no-objection certificate is issued vide Section 42 A (1) (B) only after the sanction of competent officer is received in that case.

2.2. For such references the district collector should establish in his office a **"Special Cell"** In cases like these, the district collector should first ascertain whether or not it is admissible to issue no-objection certificate for proposed conversion in use of such land, having taken into consideration the documents or orders vide which the land under application was conferred and the provisions in law vide which such land was conferred. If issue of no-objection certificate is admissible for the purpose for which demand is made, then subject to provisions in paragraph 2.1, such no-objection certificate should be issued as per rules and existing policy only after remission is made to government of payable presents (Najarana) or unearned amount and other government payments, if any.

2.3. On receipt of application of occupant by district collector vide Section 42 A (1) (B), the district collector should ascertain all items mentioned in Section 42 A (1) (B), and after the said ascertainment is done, if the issue of proposed no-objection certificate is admissible at his level, he should make available to the occupant the said no-objection certificate **within 30 days time period.**

2.4. As per provisions in the Maharashtra Land Revenue Code, 1966, the district collector can delegate his powers under Section 42 A (1) (B) to a competent revenue officer, not junior than a Tehsildar. It will be obligatory on such delegated revenue authority also, following above mentioned work procedure, to issue if admissible the necessary no-objection certificate to concerned occupant **within 30 days** of receipt of application.

3. The hereditary rights of persons of scheduled tribe category cannot be transferred without the sanction of district collector. For this purpose, the no-objection certificate should clearly mention about hereditary rights as per village form No. 7/12.

4. In the context of Section 42 A (1)(A) and (B), whosoever person has been given permission to change use of land, it is obligatory on that person to inform in writing about it to concerned Talathi and Tehsildar within 30 days of beginning of such change in use of land. Similarly, if the planning authority also has given permission to change the use of some land plot or changes in the area of use of land plot vide this government resolution, it is being made obligatory on the planning authority to inform the concerned Tehsildar and district collector about such permission. After receiving written information about development permission and after payment of conversion tax as per rate mentioned in Section 47 A and of non-agricultural assessment payment, the Tehsildar should complete the procedure of giving the charter in the form/specimen attached with Appendix-A **within 30 days** of remission of payment.

5. **To prepare and keep up-to-date the Data Bank of Lands with holding rights of the Occupants of class-two: -**

With a view to carry out well planned and effective implementation of Section 42 A and to facilitate the determination of occupancy/holding right/load of land or issue no-objection certificate in the context of proposed change in use of land, the District Collector should urgently create **Data Bank of Lands** of the holding rights of occupants of Class-two prepared and certified by concerned revenue authority at district level.

In regard to that, the instructions given, as per government resolution No. Loapr-2009/Case No. 238/L-6, dated 17.3.2012 to amend village form/specimen No.1 K in Maharashtra Land Revenue Rule Book Part-4, should be implemented.

6. **The concerned officers should scrupulously implement the above instructions. All those concerned should note that while handling cases under Section 42-A, if it comes to the notice of government that the prescribed time limit set by this**

government resolution is crossed; the concerned officer will become liable for departmental enquiry or any other suitable action.

7. Necessary publicity should be given at the level of divisional commissioner and also district collector to see that said resolution passed by state government in order to simplify the non-agriculture permission and clarify the time limit and procedure about its implementation reaches the public of the state.

The said government resolution has been made available on Maharashtra Government website www.maharashtra.gov.in and its code number is 201601201728204719. This government resolution is being issued with attestation in digital signature.

By order and in the name of Governor of Maharashtra.

(Manu Kumar Shrivastava)

Principal Secretary, Revenue and Forest Department

Copy for necessary action

1. All Divisional Commissioners
2. Settlement Commissioner and Director, Land Records, Maharashtra State, Pune
3. All District Collectors

Copy for information

1. Principal Secretary to Hon'ble Chief Minister, Mantralaya, Mumbai-400032.
2. Private Secretary to Hon'ble Minister (Revenue), Mantralaya, Mumbai-400032.
3. Private Secretary to Hon'ble Minister of State, (Revenue), Mantralaya, Mumbai-400032
4. Hon'ble Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai-400032.
5. Additional Chief Secretary/Principal Secretary/Secretary, All Departments, Mantralaya, Mumbai-400032
6. Special Executive Officer to Principal Secretary (Revenue), Revenue and Forest Department, Mantralaya, Mumbai-400032
7. All Joint Secretaries/Deputy Secretaries of Revenue Department, Revenue and Forests Department, Mumbai-400032.
8. All Desk Officers of Revenue Department, Revenue and Forests Department, Mantralaya, Mumbai-400032
9. Select File/Desk-T-1, Revenue and Forests Department, Mantralaya, Mumbai-400032.

APPENDIX "A"

*Certificate Of Decision Regarding Occupancy, Class And Load
Of Land, Vide Provisions In Section 42-A(1)(A) Of
Maharashtra Land Revenue Code, 1966*

In association with context received from Planning Authority.....with reference to land in village..., taluka..., district... survey number/block number/CTS. number.... area..., received for decision vide Section 42-A-(1)(A), based on up to date available land records on the class , occupancy of land and load on it, the decision is being given as follows: -

- (1) Survey No./Block No./CTS. No....Area..., Village..., Taluka..., District..., this land as per occupant class-one tenure right is possessed by occupant Shri/Shrimati.....
- (2) On the basis of up to date records of rights, it is concluded that the there is a load/no load in the nature of on the said land.
- (3) The said land belongs to/does not belong to account holder of scheduled tribe.

Vide Section 157 of Maharashtra Land Revenue Code, 1966, the entry in record of rights and certified entry in mutation register is assumed as true as long as it is not proved that it is contradictory, or a new entry is made in that respect as per law; the said decision is being made subject to these provisions after inspection of available up- to- date record of rights of said land and mutations.

Although the above stated decision is being communicated to the planning authority, it is obligatory on the planning authority to obtain in writing in the form of bond paper from concerned occupant that, if in future the land tenure which is decided in favor of occupant class-one vide these certificates, is found to belong to tenure of occupant class-two, then having taken into account existing provisions for that purpose, it will be the responsibility of the concerned occupant to pay to government as per rules the due amounts of presents and other amounts payable to government by following prescribed procedure when the concerned revenue authority makes a demand and that this is acceptable to the concerned occupant.

Date: -

(Tehsildar)
Tehsil Office: -
District: -
(Seal of Tehsildar)

APPENDIX "B"

Specimen of charter to be given to occupant of such land for high landing authority has issued construction/development permission

VIDE SECTION 42-A OF MAHARASHTRA LAND REVENUE CODE, 1966.

Whereas, the occupant of the land of Survey No. /Block No./Na.Bhu. No..... Area..... District.....Taluka.....Village....has, vide provisions of section 42-A of Maharashtra Land Revenue Code, 1966, obtained development/construction permission for development of said land for residential/commercial/other non-agricultural purposes vide Planning Authority's Order No..... and of which the map sanctioned by planning authority is attached with this charter.

Whereas, the occupant of said land has remitted to government on date..... as per Section 47A an amount payable as conversion tax and an amount assessed for use for non-agricultural purposes as stated above.

Therefore now vide Section 42-A, this Charter is being given to occupant of above said land, subject to provisions of above said code and provisions of Rules prepared on that basis and following the terms in association with development/construction permission given by said planning authority for use of said land made admissible for non-agricultural use.

- (1) Assessment: -The occupant of said land instead of earlier recoverable assessment will pay to government every year an annual assessment calculated at Rs./per sq. mtrs. from the date of receipt of above mentioned development/construction permission during the guarantee period ending on 31st July(Year)and after the said period is over will pay the revised assessment as decided by district collector from time to time vide above said code.
- (2) The occupant of above said land will pay on said land all recoverable taxes, rates and cess.
- (3) No change should be made in the use or area of use sanctioned as above without the prior permission of the planning authority, and after the issue of this charter if any change takes place in the use or area of use of said land with prior permission of planning authority, it will be binding on the occupant to convey to the district

collector information about the change within 30 days from the date of sanction by planning authority.

- (4) If the occupant of said land violates any of the foregoing conditions, the district collector can continue the tenure of the said occupant of land after the user pays what he deems fit, as per provisions of said code and rules made there under, the assessment for which the user is liable without prejudice to any other penalty and subject to sub-section (2) of Section 329 after paying fine as he deems fit.

In witness thereof the district collector/officer authorized by district collector has put in his signature on behalf of the Governor of Maharashtra and put in the seal of his office and the applicant also has put in his signature here on date.....20...

(Signature of Occupant)

(Signatures of witnesses and designations)

(Signature of district collector/authorized officer)

(Name and designation of district collector/authorized officer)

(Seal of district collector/authorized officer)

(Signatures and designations of witnesses and designations)

We declare that one who has signed this charter as so and so person, that A. B. person is the same person and he has put in his signature here in our presence.

(Signature)