

## OFFICE OF DISTRICT COLLECTOR, MUMBAI SUBURBS

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Number: C/Off-3k/bi.she.Circular/17

Dated 06/01/2017

### Read

- 1) Maharashtra Land Revenue Code (Amendment) Ordinance, Year 2014 dated 22/08/2014 issued by Government, Revenue and Forest Department
  - 2) Government Resolution Revenue and Forest Department No. NAP-2016/Case No. 7/T-1 dated 22/01/2016.
  - 3) Maharashtra Land Revenue Code, 1966, Section 44 and 47(b)
  - 4) Maharashtra Land Revenue (Change in Land Use and Non-Agricultural Assessment Rule), 1969
  - 5) Circular No. S V. 718/1990, Dated 29/10/1990 issued by Settlement Commissioner and Director, Land Records, (Maharashtra State)
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### : CIRCULAR :

The Government Department of Revenue and Forests has issued dated 22/08/2014 a Circular regarding Maharashtra Land Revenue Code (Amendment) Ordinance No. 17 of 2014 and has included vide Section 4(a) a new provision after Section 42 of Maharashtra Land Revenue Act 1966 by said circular. It is as follows:

“Whatever may be contained in 42 A. (1) Section 42”

- (A) There will be no need of any kind of prior permission of the District Collector for conversion of use of any land held as Occupant of Class- I for any purpose, as prepared and publicized under provisions of Maharashtra Regional and Town Planning Act, 1961 and sanctioned as Development Plan or Draft Development Plan. However, the Planning Authority, whatever be the category of land, its occupancy and the load on it, will get this decided by concerned revenue authority and after getting decision in that regard, will grant permission for development as per provisions of the Maharashtra Regional and Town Planning Act, 1966.
- (B) As decided in sanctioned Development Plan or Draft Development Plan prepared and publicized under provisions of Maharashtra Regional and Town Planning Act, 1966, in order to convert the use for any purpose of land held as Occupant of Class II or obtained from government on lease, the occupant will apply for permission to the Planning Authority and the Planning Authority will direct the said occupant to obtain no objection certificate for such change from the District Collector. The District Collector will examine those documents by which the land is conferred and the relevant laws by which the concerned land is regulated and if grant of no objection certificate to applicant is admissible then he will direct him to deposit present (nazrana) payable for that purpose and government dues and after they are given, the district collector will issue no objection certificate for change in use of such land. After such certificate is received, the concerned planning authority will grant development permission according to provisions of Maharashtra

Regional and Town Planning Act, 1966. In association with above stated Circular, the government in the Revenue and Forest Department have issued a government resolution dated 22/01/2016 and vide said government resolution under Section 42 and 44 of Maharashtra Land Revenue Code, 1966, there is no-need of non-agricultural permission and as per amendments made through ordinance dated 22/08/2014, the manner in which issue of decision certificate and charter should be implemented has been mentioned in clear terms in the said government resolution as follows.

- 1.1. According to section 42 (A) (1) (A) of the Maharashtra Land Revenue Code, 1966, regarding use decided in the draft development plan or final development plan prepared vide provisions of Maharashtra Regional and Town Planning Act, 1966, it is not necessary to obtain prior permission of district collector in respect of change in use of land held as occupant Class I. However, provision has been made that the concerned planning authority in such cases before giving development permission will ascertain from the concerned revenue authority the category of land whose use will change, its occupancy as also load on the land and after ascertainment in that regard the planning authority will grant development permission according to provisions of Maharashtra Regional and Town Planning Act, 1966.
- 1.2. Since there is no clear mention in said provision of law as to which specific revenue authority should be approached by planning authority for enquiry regarding class of land, its occupancy and the load on it, as also within what time period such revenue authority should make available to planning authority the information asked for as above, it has come to the notice of government that difficulties are being faced at regional level in the implementation of above improvements. Taking that into consideration, the government wishes to clarify that in rural areas the primary responsibility of maintaining orderly land records and to make such records up-to-date from time to time is of the tehsildar at concerned taluka level and therefore in the context of provisions in section 42 A (1) (A), in order to decide the category of land of occupant Class I, its occupancy and load on such land, the concerned planning authority should make enquiries with the tehsildar of that taluka where the tenure land of applicant occupant Class I is located.
- 1.3. The concerned tehsildar, on receipt of proposal from planning authority for decision on development of land or for change in existing use of land held by occupant Class I, should make sure that the village specimen 7/12 of land under application is up-to-date and that implementation of any sanctioned mutation is not pending. Similarly, he should also make sure from village specimen 7/12 about the category of land under application the load on it and its occupancy. Even though the entries in rights record and mutation register are not finally decisive regarding ownership rights on land, vide section 157 of Maharashtra Land Revenue Code, 1966, until the entry in rights record and certified entry in mutation register is not proved as mutually contradictory or a new entry in that respect is legally admitted, the existing entry is assumed as true. Therefore it is necessary for concerned tehsildar to supply to planning authority information about occupancy of land and its category based on up-to-date rights records. Along with this only, it is expected that the concerned tehsildar supplies to the

planning authority information based on revenue records, about the disputed cases in mutation register on land under application, or semi-judicial cases or judicial cases as available in talathi's office, and tehsil office as also economic load/burden of financial institutions on land under application.

- 1.4. It should be clearly mentioned that while supplying information as above to planning authority, if it is concluded in future that land under application was held in lien by occupant Class-2 instead of occupant Class-1, it will be the responsibility of concerned occupant to deposit with government after taking into consideration the current provisions and if demanded by concerned revenue authority, the amount payable as present (nazarana) or other amounts due to government, following prescribed procedure and that it will be compulsory for the planning authority to get in writing in the nature of a bond from concerned occupant that the occupant approves this.
- 1.5. A clear directive is being given that vide section 42 A (1) (A), after receipt of proposal from planning authority, it is binding on the concerned tehsildar within a period of 30 days to make available information as above about category of land under application, occupancy of land and load on it etc. in specimen form given in "Paragraph A" of this government resolution.

2.1. According to Section 42 A (1) (B), provision has been made that the planning authority prior to giving development permission or sanctioning change in use in the context of land held as occupant Class-II, will direct the occupant of such land to obtain no objection certificate from concerned district collector. The definition of land on lien of occupant Class- II has been given in section 29 (3) of Maharashtra Land Revenue Code, 1966. In that context, the following lands are also included in lien of Occupant Class-II:

(1) Vide Section 31 of Maharashtra Land Revenue Code, 1966, government lands awarded for specific purposes as per Maharashtra Land Revenue (Disposal of Government Lands) Rules 1971 and lands distributed vide as-is-where-is Mumbai Land Revenue Act, 1879.

(2) Lands given to some institutions or individuals for occupancy by using land acquisition act.

(3) Lands distributed as per agricultural lands and family holdings laws, different hereditary laws and Maharashtra agricultural land (Ceiling on Holding) Act, 1961.

In the context of lands mentioned under Sr. No.(1) and (2) and similarly in the context of lands given by government for specific purposes, if application is received for development permission or change in use, the district collector should not give no- objection- certificate at his level, but refer such cases to government.

So, in the context of (3) mentioned above, if a request is received from concerned occupant for development permission or change in use, the concerned district collector after examining the document by which such land might have been re-conferred, or the government resolution by which such land might have been conferred/distributed by way of possession right or on lease basis, and the

relevant laws by which such land is regulated, if there is a provision for change in use and if government policy in this regard is available and accordingly if grant of no-objection-certificate to occupant for change in use at district collector level is admissible, the concerned district collector should direct the occupant to pay for such purpose as per rules the government share of due unearned income/presents (nazarana) and other government dues. After the said payable unearned income/presents (nazarana) and other government dues are deposited with government by those concerned, the district collector should issue a no-objection-certificate for change in use of such land. The district collector should remain alert in cases where government or divisional commissioner are competent to grant approval for change in use of land under application; in such cases no-objection-certificate under section 42 A (1) (B) should be issued only after receipt of approval from concerned competent authority.

2.2. The district collector should establish a "Special Cell" in his office for such contexts. In such cases, the district collector should first make sure whether or not issue of no-objection-certificate for the proposed conversion of use of land is admissible on the basis of those documents or orders under which land under application was conferred and taking into account those provisions in law by which such land was conferred. If no-objection certificate is admissible for the purpose for which demand is made, no-objection-certificate should be issued, subject to provisions in paragraph No. 1 as per rules and existing policy, after getting deposited with government the payable presents (nazarana) or unearned income and other government dues if any.

2.3. Vide section 42 A (1) (B), after application of occupant is received, the district collector should ensure that all items mentioned in section 42 A (1) (B) are fulfilled and after the said surety, if issue of no-objection-certificate is admissible at his level, he should make available to occupant within a period of 30 days the said no-objection-certificate.

2.4. According to provisions in Maharashtra Land Revenue Code, 1966, the district collector can delegate his powers under section 42 A (1) (B) to such competent revenue authority who is not junior to a tehsildar. It will be binding on such delegated revenue authority also to issue, by following above said procedure, the necessary no-objection-certificate to concerned occupant within 30 days of receipt of application.

3. Occupancy/tenancy of persons of scheduled tribes will not be transferred without the sanction of district collector; for this purpose a clear mention be made in the no-objection-certificate in village specimen 7/12 about such occupancy/tenancy.

4. In the context of section 42A (1)(A) and (B), it is binding on any person who has been given permission for change in use of land, to inform in writing to the concerned talathi and tehsildar within 30 days of the beginning of such change in use. Similarly, if planning authority has given permission to change use of some plot of land or change in area of use of plot of land, it is made binding on him by

this government resolution to inform the concerned tehsildar or district collector about such permission. After receipt of written information of development permission, after payment at the rate mentioned in section 47A of conversion tax and the non-agricultural assessment for it, the tehsildar should complete the implementation of conferring the charter within 30 days of making such payment in accompanying specimen in Appendix-B.

5. To prepare data bank of holding rights of occupants of Class II and keep it up-to-date:-

With a view to have a well-planned and effective implementation of section 42 A, and from the point of view of deciding occupancy of land/holding rights/load or facilitating issue of no-objection-certificate for proposed change in use, the district collector should expeditiously create Data Bank of lands prepared and certified by concerned revenue authority at district level relating to holding rights of occupants of Class II.

In that context, implementation should be made according to instructions as given in government resolution no. Lopaapr-2009/Prk.238/I-6, dated 17/3/2012, village specimen No. 1k for improvement in Maharashtra Land Revenue Rules Book Part-4.

6. The concerned officers should scrupulously implement the above instructions. All concerned should note that if while handling cases under section 42A if a case of exceeding the prescribed time limit comes to the notice of government, the concerned officer will be liable for departmental enquiry or any other suitable action.

7. In order to convey to the public the said decision taken by state government, in the context of facilitating non-agricultural permission by setting time limit and clearly laying responsibility for implementation, necessary publicity should be given at the level of divisional commissioner as also district collector.

Observing the 7/12 abstracts of Mumbai Suburban District, entries about power category/occupant Class-I-Class-II do not seem to have been made. Similarly, since entries on 7/12 extract about existing occupant, entries about urban land ceiling occupancy, entries of private forests and kandalvan, entries with financial institutions, entries of land acquisition, about lands given on possession rights, about lands conferred on lease and other up-to-date entries, have not been taken, it will not be appropriate to give decision certificate at tehsildar level on the basis of only 7/12 extract and mutation entries on it in respect of Occupant Class-I and other lands. Similarly, in Mumbai Suburban District, out of the government lands given on possession rights/lease basis, it is noticed that on the possession rights of earning papers of about more than 1994916 square meters of land while it should necessarily be possession right "G"/"B", the power category on earning papers has been taken as "K" and since this has come to notice, even when the tehsildar has been authorized vide government resolution dated 22/1/2014 to issue

decision certificate, it will be more appropriate to issue decision certificate through office of district collector.

After receipt of proposal from planning authority about decision certificate, folders should be submitted to district collector for signature after having scrutinized the papers mentioned heretofore and having prepared the decision certificates.

- I. 7/12 extracts/earning card extracts
- II. 7/12/ all papers/mutation entries relating to how name of possessor got entered on extract of earning cards
- III. Has the question-marked land in the entry book of district collector's office been conferred with government possession rights/lease?
- IV. Less-more pamphlet
- V. Enquiry register
- VI. Opinions on development outline of Greater Mumbai Municipal Corporation
- VII. Five copies of sanctioned building outline
- VIII. Judicial claims regarding question-marked earnings and bonds of compensation for damages regarding holders of question-marked earnings not being of scheduled tribe category

In case it is noticed during scrutiny that the applicant is making unauthorized use of question-marked earnings for non-agricultural purposes, a penalty equal to 40 times the non-agricultural tax should be recovered from the applicant and as per provisions of government resolution dated 22/01/2016 the necessary decision certificate/charter should be submitted along with folder for signature of district collector.

Similarly, the Settlement Commissioner and Director, Land Records, Pune has issued a circular dated 29/10/1990 and vide paragraph no. 7 of said circular, the concerned district superintendent, land records and city survey officer have been directed such that, where city survey is done of city or village/places, where in the survey of city site having given earnings of unauthorized non-agricultural use the power category "K-1", and on the said earnings card entries of names of unauthorized building owners etc. have been made as possessors, in that regard the competent appeal officer should conduct re-examination as per provisions of Maharashtra Land Revenue Code, 1966, and if the said present holders have still not got formally regularized the unauthorized use, then after removing their names from the earnings card, an entry on earnings card towards unauthorized non-agriculture should be made so that the name of such person, who by using unauthorized non-agriculture is violating rules, can not be entered as holder in the city survey records. However, his name will be retained in the concerned village rights records so that after obtaining non-agricultural permission in the city survey limits the name of holder will appear on the earnings card.

But a provision has been made under section 42 of Maharashtra Land Revenue Code, 1966 that no agricultural land will be used for non-agricultural purposes without the permission of concerned district collector and vide section 44, in order

to convert use of land from one purpose to another purpose, it is incumbent on the occupant or senior holder or pedigree (kul), by taking consent of pedigree or as-is occupant, or senior holder, to make an application for permission to district collector in prescribed form. In this context, since by issuing Maharashtra Ordinance No. 17 on date 22/08/2014, after section 42 a new section 42A has been included in Maharashtra Land Revenue Code, 1966, and as per the draft development plan or final development plan prepared vide provisions of Maharashtra Regional and Town Planning Act, 1966 and in order to change the use as determined in development plan, there will be no need to obtain non-agricultural permission vide section 42. . Such provision has been made vide section 42 A. Therefore, whatever may be incorporated in the circular dated 29/10/1990 of Settlement Commissioner and Director, Land Records (Maharashtra State), Pune, as per the charter issued vide provisions in government promulgated Maharashtra Ordinance No. 17 dated 22/08/2014 and government resolution dated 22/01/2016 of government revenue and forests department, the concerned city survey officer having entered the name of concerned holder on the earnings card of question-marked earnings, should change the power category on said earnings card from "agriculture" or "K-1" to power category "K".

The concerned officer should implement the above instructions scrupulously. All concerned should note that while handling cases under section 42 A if violation of the time limit prescribed vide government resolution dated 22/01/2016 comes to be noticed, the concerned officer/employee will be eligible for departmental enquiry or other suitable action.

Sd.  
Nitin Mahajan  
District Collector for  
Mumbai Suburbs

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