

S. S. Hussain I.A.S. (Ex)
Chief Executive Officer

Ref. No. : MCHI/CEO/15-16/ 285

April 20, 2016

Dear

I would like to inform you that our MCHI-CREDAI Mira Virar Unit's member's projects from Thane District Jurisdiction have been held up due to slow process from concerned officials of the Department.


Please see the attached annexures related to the pending issues of NA permission in that region. You may please examine their issues/ points which are mentioned in the annexure about NA permission and kindly do the needful to expedite the same, as the simplification was intended by the government by the latest amendment in MLRC.

Yours



(S. S. Hussain)

To,
Shri Manu Kumar Srivastava (I.A.S.)
Principal Secretary,
Revenue & Forest Department
Government of Maharashtra
Mantralaya


20/04/16
लिपिके,
प्रधान सचिव (सहकार)
सहस्रल व जन विभाग,
मंत्रालय, मुंबई

BRIEF BACKGROUND

1. MCHI MIRA VIRAR UNIT an Association of Builders and Developers who are carrying on business within the vicinity of Mira Bhayandar Municipal Corporation
2. Mira Bhayander Municipal Corporation is the Planning Authority as contemplated under the provisions of Maharashtra Regional and Town Planning Act, 1966. Mira Bhayander Municipal Corporation is responsible for according various permissions including sanctioning of plans
3. The Association is concerned with Non Agricultural Permission (N.A. Permission) which was earlier accorded by District Collector, Thane. Since inception of Mira Bhayander Municipal Corporation the provisions of section 42 of Maharashtra Land Revenue Code, 1966 held the field. In order to convert the agricultural land for non agricultural purpose, the concerned person had to get permission for N.A.use. This permission essentially was granted by the District Collector, Thane.
4. The District Collector, Thane is supposed to follow the Maharashtra Land Revenue Conversion of Use of Land and Non Agricultural Assessment Rules 1969. The provisions of the said 1969 Rules contemplate that an application has to be preferred to the District Collector, Thane as provided under sec. 44. The application should be made in Schedule I. Rule 4 postulates the conditions in which the permission may be granted. After the permission is granted, Sub Rule (7) provides for grant of sanad
5. . There is a Development Plan which has come into force for the purpose of Mira Bhayander Municipal Corporation. As per the said Development Plan, the development of the city is clearly demarcated in the development plan (D.P. for the sake of brevity). Majority of the properties are shown for the purposes mentioned in the said D.P.Plan. Many of the properties which are to be developed are shown in Residential or Industrial zones. It appears that since these properties are governed by the provisions of Maharashtra Provincial Municipal Corporation Act as well as MRTTP Act, the said properties are shown in Development Plan. The State Government thought it fit to simplify the procedure
6. Government of Maharashtra suggested amendment to section 42A of Maharashtra Land Revenue Code, 1966. One of the objects of incorporating this amendment was to simplify the process of non agricultural permissions. Previously whilst permissions were to be obtained under sec. 42 of the Maharashtra Land Revenue

Code, the period of time which was exhausted was nearly one to two months. The Government probably wanted to reduced this period and to simplify the process. The objection was twofold viz. (a) to expedite the process and (b) since the process is expedited the people would resort to taking N.A. permissions and not constructing the properties without obtaining permissions.

7. The follow up of the above amendment is that the person who seeks conversion of land for the purpose of N.A. usage has to take permission from the Collector. Sub Section (1a) of section 42A provides that permission of the Collector shall not be necessary for conversion of the land held as "occupant class I". It further provides that the Planning Authority, however, shall ascertain from the concerned revenue authorities the class of land, its occupancy and encumbrances, if any and thereafter shall grant the development permission. Thus, what falls out of this is that (a) permission is not necessary in the first place and that the planning authority to whom permission for construction is applied shall forward the papers to the Revenue Authorities for the purpose of ascertaining only three things, (1) class of land, (2) occupancy and (3) encumbrances. It is thus clear that development shall not be carried on the property which is encumbered by some other person or upon the land which cannot be otherwise held by the person applying for development. In any event, section 42A clearly underlines the principle that the permission for non agricultural conversion is not at all necessary.
8. Section 2 of Section 42A further postulates that the person who converts the use of land in favour of class (a) of sub clause (1) shall inform in writing to village officer and Tahsildar within 30 days from the date on which the change of use of land was commenced. Thus, only requirement is that the person who intends to convert the land should inform the village officer of the change of land. Sub Section (3) provides for penalty in case of not informing such person. Sub-section (4) of section 42A provides that the person who has obtained the Development Permission shall pay the conversion tax at the rate mentioned in section 47A and N.A. assessment thereof, after the same is paid the concerned Revenue Authority has to grant him a sanad in the form prescribed under the Rules within a period of 30 days from the payment thereof. In the case of delay the concerned authority shall record his reasons for the same. Thus, what falls from the aforesaid is that the person who has got Development Permission shall pay conversion charges as mentioned in section 47A and also N.A. assessment after the payment of which the concerned

PROBLEM IN RESPECT OF NA PERMISSION

1. That initially after this Ordinance came into force the members of the association applied to the Municipal Corporation. The Municipal Corporation thereafter forwarded the said applications to the Circle Officer, Mira Bhayander. It appears that in near about 31 matters the concerned Circle Officers had given his consent and Municipal Corporation in pursuance of the details which were obtained by them, the details being (a) class of land, (b) occupancy and (c) encumbrances, granted Development Permission. It appears that the Tahsildar, Thane had also issued their opinion and their consent in respect of as many as 3 different applications. Whilst the construction was about to begin all of a sudden on 22nd April, 2015 the District Collector, Thane had written a letter to the Municipal Commissioner, Mira Bhayander Municipal Corporation. In the said letter the District Collector contended that in as many as 31 cases the Circle Officer and in as many as in 3 cases the Tahsildar, Thane had granted permissions/provided information based on which the permissions were granted by the Municipal Commissioner. The District Collector further stated that it is on the basis of 7/12 extract only that the development permissions were granted, other aspects such as whether there are any legal complications, or whether there is any loss of revenue etc. are not considered. Hence the District Collector directed the Commissioner of Municipal Corporation that no further action should be taken in pursuance of the permissions granted by them.
2. The letter dated 22nd April, 2015 overlooks the fact that the amendment does not specify as to which officer has to grant the permission. The words which are used in section 42A are that the concerned revenue officer. This being the position, Collector ought not to have justified the permission/correspondence/orders passed by the concerned revenue officer who was lower to him in hierarchy without their being any proof of the misuse or improper land of the same.
3. That the learned Collector has virtually usurped the powers of the concerned revenue authorities. The learned District Collector lost sight of the fact that his letter is counterproductive to the development of the properties in Mira Bhayander Municipal Corporation. The Association is thus aggrieved by the act of the Collector in sending the said letter dated 22nd April, 2014 which propelled the Municipal Commissioner to cancel the permissions already granted. Some of the members of the association thereafter processed independent application to the Collector for the purpose of ascertaining the class of land, occupancy, encumbrances upon the land. It is pertinent to note that the said applications are not decided by the office of the District Collector for nearly about 5 to 6 months. It appears that the Collector was not pleased with the introduction of section 42A to the Maharashtra Land Revenue

Code. As a result of which the District Collector, Thane has started to sit upon the files and not deciding the same for pretty long time. Thus, the remedy which Act the legislature decided to cure by virtue of insertion of section 42A became worst than cure.

Suggestions

1. It is, therefore, necessary to direct the Collector to direct his subordinates or to any officer he may appoint to decide the said applications as expeditiously as possible.
2. It is pertinent to note that the District Collector has neither permitted his officer under him (**Concerned Revenue Authority**) to give such information nor he himself is giving such information nor the Collector is appointing any person who would give information to the Municipal Corporation. This clearly shows the manner in which the District Collector is sitting over the files and not adjudicating the same.
3. Land already classified as class 1 in Development Plan and 7/12 Extract; possession and encumbrances should be done in a time bound manner.
4. The District Collector should define the encumbrances e.g. restraining order from appropriate forum (Civil Court); injuncting development of said land

PROBLEMS REGARDING GRANT OF SANAD

1. The Association states that another difficulty which is faced by the association is that while granting of sanad it is pertinent to note that section 42A sub-section (4) provides for issuance of sanad. Sub-section (4) provides that on receipt of information from the person who has obtained development permission and on payment of conversion tax at the rate mentioned in section 47A and Non Agricultural Assessment it shall be incumbent upon the concerned authority to grant him sanad. **In case the said Sanad has to be granted within 30 days from payment. In case of delay in issuing the sanad the concerned authority shall record his reasons for the same. (Which is not being followed)** Thus, Section 42 A has been introduced with a vowed object of expeditious issuance of Sanad. The Maharashtra Land Revenue Code provides for issuance of sanad in case of non agricultural land. For the said purpose the provisions of Maharashtra Land Revenue (Conversion of Use of Land and N.A. Assessment) Rules, 1969 are very important. Sub Rule 7 thereof provides that where the land is permitted to be used for N.,A. purpose then subject to provisions of any law for the time being in force, sanad shall be granted to the holder thereof. Thus as far as Rule 7 is concerned, the only prerequisite condition of issuance of sanad is that the land shall be permitted to be used for N.A. purpose. When such permission is granted, sanad should follow automatically subject to payment of N.A.assessment.
2. It is pertinent to note that section 47A of Maharashtra Land Revenue Code provides for levying of liability for payment of conversion tax by holder or by change of land. **Thus, the only requirement which is mentioned is that conversion tax shall be equal to 5 times to N.A. assessment leviable on such land in accordance with the purpose for which it is to be used or permitted to be used. It is pertinent to note that in the 7/12 extract the present assessment for agricultural purpose is clearly visible. Only thing which has to be done is to multiplier of 5 so as to get the new tax which is leviable. Thus, the procedure is quite simple and section 47A takes care of the amount/quantum of assessment. However, in the present case the collector are not adhering to either to Rule 7 of N.A.Rules or sec.47A of Maharashtra Land Revenue Code.** The association states that the procedure which the respondents have in fact adopted is not only cumbersome, technical but also time consuming. The association has drawn up a chart which explains the actual time taken for the purpose of grant of sanad.

Sr. No.	Process	Approximate Time Elapse
1	The Application for grant of Sanad is applied at respective Munciple Commissioner's Development Authority's office by the respective person.	
2	The respective Munciple Commissioner's Development Authority's office takes e file to the Collector for sanctioning of Sanad.	5-30 Days
3	The application for Sanad is later sent to respective Tahsildar, Nayab Tahsildar's for scrutiny	1-5 Days
4	The Tahsildar/ Nayab Tahsildar sends the application to the respective Circle Officer of the village for his report	
5	On persuasion, the Circle Officer goes through the previous revenue records, makes site visits, prepare report and sends the application along with his report back to the Tahsildar's office.	
6	On persuasion, The Tahsildar / Nayab Tahsildar prepares another report and forwards the application along with his and Circle Officers report'back to the revenue department of the Collector office	90 Days
7	The application with the Tahsildar's report remains un-scrutinised with the concerned revenue officer at his table for persuasion.	30 Days
8	It is supposed that the Concerned revenue officer will send the file with his application and notings and report of Circle Officer & Tahsildar to Revenue Tahsildar.	
9	On persuasion, the Revenue Tahsildar will pursue the application for Sanad and seek NOC from all related departments like, Stamp Duty, ULC etc.	15 Days
10	On persuasion, after receiving positive report from the Concerned Departments, the Revenue Tahsildar, may forward the application for Sanad with his noting and calculation of land conversion charges forward the file to Resident Deputy Collector.	30 Days

11	The Resident Deputy Collector shall then scrutinise the file and forward the same to the Dist. Collector for her approval.	15 Days
12	On approval of the application for Sanad, the applicant is informed to pay the sum required for the grant of Sanad.	10 Days
13	On payment of the Conversion Charges the Applicant is awarded with the grant of Sanad within a period of one month. That too is not certain, in case of delay in issuing such Sanad, the concerned authority shall record his reasons for the same.	
14	On enquiry from the Collector Office and Other Developers, it is learnt that no application for Sanad has been approved till date.	30 days
	Anticipated Total Days as per current process for Grant of Sanad	255 days or 8 to 9 Months

Suggestions

1. The said chart clearly shows unreasonable time consumed by the office of the Collector in granting Sanad. It is the specific case of the association that as a matter of fact permission for grant of Sanad is not essential permission for the purpose of granting development permission. Development permission once granted can take its effect subject to grant of Sanad. **At the highest undertaking can be taken from the developers that their construction would be subject to grant of Sanad. However, the Corporation adamantly and vehemently insists on issuance of Sanad by the concerned Revenue Authorities. The association states that as a result of which entire construction work in the vicinity of Meera Bhayander has come to grind to a halt. The real estate industry in this area has suffered a massive unprecedented set back. The delay is purely red tape attitude adopted by the Government authorities. It is the contention of the association that grant of Sanad is not condition sine qua non for the purpose of grant/issuance of development permission.** Municipal Authorities, however, insists for the Sanad as a pre condition for granting further development conditions such as commencement certificate etc.
2. The whole process of issuance of Sanad should be time bound and transparent.