

Analyzing the Government's Authority to Review Non - Agriculture Permission in the Backdrop of Objectives to be Achieved: A Legal Perspective

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Abstract: *The article delves into the intricate legal aspects surrounding the Government's power to Review non - agriculture permission for land use change within villages in the backdrop of (ulterior) objective to reduce down compensation for acquisition of land amounting to colorable exercise of power. Focusing on a specific case study, where a decade old granted non - agriculture permission (hereinafter called "NAP") was subject to numerous conditions and eventually reviewed due to discovery of new & important but irrelevant or not applicable information employed to exercise quasi - judicial power of review. This comprehensive analysis examines the Constitutional & Statutory provisions involved as well as the legality of review process. It explores key issues such as deemed lapsing of non - agriculture permission, impact of regional planning and rights of land owners against unlawful review and arbitrary & unlawful acquisition of their property. Ultimately, this article provides insight into the potential remedies available to the land owners facing NAP reviews and broader implications for land use governance.*

Keywords: Non-Agricultural Permissions, Land Use Change, Government Review, Legal Analysis, Land Acquisition, Constitutional Rights

1. Aims & Objectives of this Paper

Non agriculture permission is essential for change of land use within the villages (it has been exempt for lands within municipal limits and the villages having development plan). It is governed by provisions of Maharashtra Land Revenue Code, 1966 (herein after called "MLR Code, 1966"). The permission so granted is always subject to certain conditions. The permission so granted is sacrosanct so long as the conditions are observed and complied. However, the Government is empowered to review the permissions granted by it in light of discovery of new and important information at any point of time. This paper aims at analysis of the said power of the Government for review and find out whether the discovery of new & important information alone is independent and sacrosanct for reopening the permissions granted by it.

Problem statement and case history: - is as under:

- a) Non Agriculture Permission granted to the applicant by Collector, Gondia on 23.2.2012 for the land kh. no.98, 99 of Arjuni, Tahasil - Gondia subject to several conditions.
- b) Accordingly, layout of the land too was approved by Collector. However, the layout of the land was not in conformity with the then Development Control Rules. The roads were of 6 m whereas, it ought to have been of 9 meters, no statutory open space [at] 10% of the area of the land has been provided.
- c) One of the condition was that the applicant shall develop the land within one year from the date of grant of Non - Agriculture Permission. It further stated that in case of breach of any condition, the NAP permission will be revoked.
- d) Upon grant of NAP permission, the NA assessment was recovered.
- e) Applicant thereafter cut the bunds of the land, leveled the land, demarcated the layout and fixed the stones for the plots but did neither construct the roads, drains nor provided electricity or water supply till date.
- f) In the mean time, part of the land had been notified on 7.9.2013 u/s 4 of Land Acquisition Act, 1894 for acquisition of canal. The alignment of canal bisected the land into 2 parts making thereby, the rest of the land unapproachable.
- g) But instead of pursuing the acquisition through the Statute, the Authority arbitrarily & without consent of the owners of affected lands, took recourse to acquisition of land by private negotiations method. As such, all the lands under the alignment of canal were valued by Assistant Director of Town Planning, Gondia (hereinafter called "ADTP"). It valued all the lands assuming it as agriculture lands. Value of applicant's land was determined as about Rs.10 lakhs. The possession of the land has been taken without completion of acquisition proceedings, without payment of compensation and canal has been constructed during 2018. Title of the land of applicant under canal however remained with the applicant himself as the ownership therein did not pass to Government for want of mutation in the 7/12 i. e. ownership document despite physical (though illegal) possession was with the Government.
- h) However, discovering that category of applicant's land is Non - Agriculture, the ADTP revalued the land at about Rs.88 lakhs. The acquiring authority viz Irrigation department objected it to being exorbitant and requested to reduce it.
- i) At this point, the Town Planner In - charge of o/o ADTP pointed out breach of condition of Non - Agriculture permission order viz land had not been developed by the applicant within 1 year of NAP and therefore opined that the NAP is deemed to have been lapsed. He further informed that the Regional Plan of Gondia has been sanctioned by the Government on 1.1.2018 u/s 18 of Maharashtra Regional & Town Planning Act, 1966

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(hereinafter called “MR & TP Act, 1966”). As per this Regional Plan dated 1.1.2018 as well as Byelaw no.5.1.1 of Unified Development Control & Promotional Regulations (hereinafter called as “UDCPR”) sanctioned by Government on 2.12.20, the land has been included within Agriculture zone since beyond 500 meters from the Gaathan. In view of discovery of this new and important information, he suggested the Collector to review the NA permission and revoke the said permission so that the land will revert back to agriculture. The said land, which then valued as per its agriculture status and the compensation would be too less i. e. around 10 lakhs.

- j) The Collector, Gondia therefore sent an application to Commissioner, Nagpur for permission to review based upon discovery of aforementioned information, which was granted vide letter no.99 dated 28.1.2022.
- k) Accordingly, a notice has been served upon the applicant to state as to why, the NA Permission granted to her shall not be revoked.
- l) It is this notice which is the subject matter of evaluation by the author.

1) **Legal provisions:** Several provisions out of several Statutes are examined to assess the legality or otherwise of the review. The same are discussed as under:

A) **Constitutional: - Art.300 - A of The Constitution of India** guarantees that no private land / property will be acquired / taken over by the Government unless otherwise than:

- For a public purpose,
- Within the procedure established under a valid Law and
- Upon payment of compensation to the affected persons.

B) **Statutory: - Maharashtra Land Revenue Code, 1966:**

- a) **Review u/s 258:** No order shall be reviewed except upon prior sanction from the superior officer and upon:
 - Discovery of new & important matter or evidence,
 - Some mistake or error apparent on face of the records or
 - Any other sufficient reason.
- b) **Rule no.4 (1) (c) of Maharashtra Land Revenue Rules, 1969:** - If the Non - Agriculture use of the land is not commenced within a period of 1 year from the date of grant of NA Permission, unless it is extended from time to time, the NA Permission shall be **deemed** to have been lapsed.
- c) **Section 115:** - The NA Assessment shall be levied from the date on which, the land is actually used for a NA purpose.

2) **Analysis of problem in light of Legal provisions: -**

- a) The power to grant NA Permission lies with the Collector u/s 44 of MLR Code, 1966. AS on the date of NA Permission, there was no Regional Plan for the area. Hence, NA Permission for residential purpose granted by the then Collector, Gondia was well within his powers and was well within the conformity of land use. Hence, the permission granted by him was **valid**.

b) It is however true that the layout was not in conformity with the then Development Control Rules in respect of inadequate road width and absence of required open space.

c) **Part development of infrastructure in the layout by the applicant:** - It is further true that only part development of the layout - land (viz. cutting of bunds, leveling, demarcation of layout on site and fixing of stone for the plots) has been made by the applicant and she did neither construct roads, drains nor provide electricity or water supply. Hence, it can be said that the land had not been fully put to NA use within 1 year of the grant of NA Permission.

d) **Lapsing of NA Permission: -**

- The model condition no.4 (1) (c) of MLR Rules, 1969 though states that the NA Permission shall lapse if the land is not put to NA use within 1 year from the date of grant of NA Permission. However, as per R & FD Circular no.10329/45 dated 29.1.1951 of Government of Maharashtra, which is reproduced in clause 50 of Manual no. II of MLR Code as well as judgment of High Court of Bombay in SR Mehadia vs Maharashtra (1990) M L J.1039, the model conditions cannot be enforced unless it is embodied under the NA order. In the instant case, the said condition viz. lapsing of NA Permission has not been incorporated in the NA order and therefore, the NA Permission cannot be deemed to have lapsed within 1 year of grant thereof or till date.
- It has been specified in the NA order that in case of breach of any condition, the NA Permission will be cancelled. That means the cancellation of NA Permission will not be automatic but will have to be done specifically by the Authority.
- Instant review proceedings for cancellation of NA Permission is evidencing that the NA Permission is/was not **deemed** deleted within 1 year of grant thereof i. e. on 23.2.13. This is so because had the NA permission was deemed deleted on 23.2.2013, then present proceedings for cancellation of NA permission could not have been initiated as there cannot be cancellation of a deemed lapsed NA Permission.
- **Legal impediment for developing layout of the land:** - The NA Permission has been granted on 23.2.2012. The land acquisition proceedings have been initiated during 2012 - 13 as is evident from the case no of the LA proceedings. The joint measurement of the land was held on 19.1.2013i. e. within less than 11 months from NA order whereby, alignment of canal became evident which is bisecting the land of the applicant into 2 parts. Section 4 notification of Land Acquisition Act, 1984 was issued on 7.9.2013. The possession of the land has been arbitrarily, unilaterally and unlawfully taken by the Authority in 2018 without consent of the applicant and canal has been constructed.
- Thus, the applicant was legally as well as physically prevented to enter into her land and to do the development of infrastructure within the layout. The said impediment is still continuing and will extend till Award is passed, compensation is paid, approach to

the left over land of the applicant is provided over the canal and legal possession is taken by the Authority.

- The applicant cannot therefore be alleged to have breached the condition or failed to do the development of infrastructure in the layout - land.
- **Payment of NA Assessment:** - Section 115 of MLR code, 1966 prescribes that the NA Assessment shall be levied after the land is used for NA use. The first NA Assessment of the land has been paid in May, 2012 and latest in February, 2022. The regular payment of NA Assessment to the Government by the applicant is evidence to the fact that the land has been used for NA purpose till date. In view of the above, the NAPermission is very much alive as on the date of sanction of Regional Plan of Gondia. e. on 1.1.18 or on the date of sanction of UDCPR i. e. on 2.12.20 or even as on today till it not specifically revoked.

A) **M - 18 of Regional Plan of Gondia relating to Committed Development:** - The Regional plan of Gondia has been published on 2.3.2017 and sanctioned by Government on 1.1.2018. It is true that as per M - 7 (d) of the said order, the land beyond 500 meters from the Gaathan of Arjunii. e. village having a population of less than 5000 persons has been included within agriculture zone. But **M - 18** of the same order of the Government relating to Committed Development states that any development permission granted before the publication of draft Regional Plan shall be continued to be valid and shall prevail over any adverse regulation or zoning at any later date, if any. Thus, by virtue of M - 18, the NAPermission, which was granted to the applicant prevailed over adverse regulation of regional plan for inclusion thereof within agriculture zone and has been retained by virtue of provisions of committed development. Hence, the opinion of the Town Planner that the land has been included within agriculture zone is patently false and is in gross ignorance of legal provisions.

B) **Provisions of UDCPR sanctioned by Government on 2.12.20:** -

- a) **DC Rule no.5.1.1: Inapplicable:** - The Town Planner has taken recourse to DC Rule no.5.1.1 and stated that the land of the applicant is within agriculture zone being beyond 500 meters from the gaathan. However, this is **half correct** information.
- b) **DC Rule no.1.5: Saving:** - According to saving clause, the development permissions granted prior to coming into force of UDCPR i. e.2.12.20 have been declared to be valid, continued to be valid and have been specifically saved. Hence, the provisions of Rule no.5.1.1 does not apply and the NAPermission granted to the applicant continues to be valid, being saved.
- c) **DC Rule no.5.3 relating to Committed Development:** -
 - Any development permission granted before publication of Regional Plan. e.2.3.2017 shall be continued to be valid for that respective purpose. The word "development" has been defined u/s 2 (7) of MR & TP Act, 1966 as including subdivision or layout of the land. Thus, the NAPermission granted to the

applicant continues to be valid till date being a committed development.

- This sub - clause of the Unified Development Control & Promotional Regulations for Maharashtra states that the layouts already approved/development permission already granted for residential purpose and which are valid as per the provisions of UDCPR shall be entitled for development subject to use of earlier permission. Naturally, the layout was neither in conformity with the then DC Rules nor the present UDCPR. But here, the provisions does not say that the layouts which does not confirm to UDCPR shall be revoked; it says that such layouts shall not be entitled for development.

C) **Status of layout of applicant which is not confirming to the then Development Control Rules:** - It is true that the layout of the applicant is not confirming to the then DC Rules in respect to inadequate width of layout roads and absence of statutory 10% Open Space therein. Moreover, UDCPR no.5.1.3 (ii) permits the **valid** permissions for development. However, the word "valid" has not been defined in the ACT or the Rules. It will therefore have to be inferred as below:

- a) The sub clauses i, ii, iii to Rule no.5.1.3 makes it evident that the residential use either at the time of grant of permission when there was no regional plan or under Regional Plan (i. e. either of the two) shall continue to be valid. In the instant case, residential use was permissible as on the date of grant of NAPermission to the applicant as there was no Regional plan at that time and therefore the NA permission to the applicant is still valid despite her land got included within agriculture zone at a subsequent date in the Regional Plan, Gondia i. e. on 1.1.18.
- b) The same is evident from UDCPR no.5.4.1 for committed development within Kolhapur Regional Plan when its sub - clause i & ii are interpreted i. e. permissions granted prior to sanction of RP for use shall be valid if it is in accordance with either the earlier RP of Kolhapur - Ichalkaranji or present RP of Kolhapur. However, for cancellation of permission, it specifically states in 5.4.1 (ii) (a) that the permission granted prior to RP Kolhapur which is not in accordance with the use in both the Regional Plans shall only be treated as illegal & to be cancelled.
- c) **Validity of inconsistent layout permission:** - The note below UDCPR no.5.4.1 states that the layouts which are approved before the publication of Regional plan but not fulfilling the requirements of the then DC Rules such as road width, open space etc but saved as per above special regulations shall be granted 75% of Floor Space Index permissible in such zone.
- d) Hence, it makes it clear that the layouts inconsistent with the then DC Rules like that of the applicant are not to be cancelled but permitted with the reduced FSI or shall be allowed to revise the layout in accordance with the present DC Rules.

3) **Remedy to applicant:** - Taking overall view of the legal provisions and the action being taken by the Authority in the matter, following violations are noticed to have been committed by the Government Authorities:

a) **Infringement of Constitutional Rights under Article 300 - A:** - The Authority notified the land of the applicant u/s 4 of Land Acquisition Act, 1984 for acquisition of canal but did not pursue it and unilaterally opted for acquisition of land by private negotiations method. Moreover, without declaration of Award or without payment of compensation to the applicant, it unlawfully took possession of applicant's land and constructed canal thereon. This is blatant violation of constitutional guarantee under Art.300 - A of The Constitution of India which provides that no private land shall be acquired by the Government without the procedure established under a Statute. The Land Acquisition Act permits taking over of possession only upon declaration of Award and payment of compensation and not otherwise (except of course under the provisions of urgency clause where land is required to meet any emergency. But even here also, advance compensation of 80% of the estimated value of land is to be tendered to the applicant and then after only, the Government can take possession of the land with 15 days prior notice. Rest of the payment becomes payable upon declaration of Award).

b) **Objective of Review is unlawful:** - It is clear that the Authority invoked the provisions of review for the purposes for **reducing the compensation**. While on one hand, the provisions of "Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013" have been employed to award fair compensation and on the other hand, the compensation is sought to be unfairly reduced. Moreover, the objective of the Authority is not to rectify the error/mistake committed in the approval of layout or to align the past permissions with the adverse zoning of land use within the subsequently sanctioned regional plan. Had it been so, the applicant's layout would not have been singled out; all the similarly placed past permissions too would have been reviewed. This is discriminatory and violation of Article 14 of The Constitution of India which guarantees equal treatment before the Law and prohibits discriminations amongst the similarly placed. Hence, the objectives for review in the instant case is patently illegal and unlawful.

c) **Essential conditions for reopening of the case under review Not Satisfied:** - Section 258 (2) of MLR Code, 1966 states that no order granting permission shall be reviewed except upon discovery of new or important information or some mistake or error apparent on the face of the record or for any other sufficient reasons. In the instant case, the discovery of important matter i. e. the land came within agriculture zone as per Regional Plan, Gondia is **irrelevant** and has been made overlooking the statutory provisions relating to committed development and saving clause. Hence, the essential conditions required to be satisfied for reopening of the earlier permissions in review proceedings have

not been complied with. As a result, the review proceeding is **void ab initio**.

2. Conclusion

In view of the above, following remedy is available to the applicant:

- a) To challenge the review proceedings before the Hon'ble High court u/Art.226 of Constitution and seek mandamus as aforementioned for:
 - Dismissal of review proceedings,
 - For direction to the authority to initiate land acquisition proceedings for acquisition of land for canal & payment of compensation based upon status of land as non - agriculture,
 - For payment of rent for the possession of land taken by the Authority during the period and
 - For penalty to the erring officers for the act of unlawfully taking possession of applicant's land and misleading the Authority for review.
- b) To file an objection before the Collector in the review proceedings.
 - If the Collector is satisfied about the submissions, it may dismiss the review proceedings or
 - if the Collector does not agree with the submissions and allows the review and order the cancellation of NA Permission, then to challenge it in appeal before the Commissioner u/s 247 of MLR Code, 1966.
 - If Commissioner too allows the review and agrees for cancellation of NA Permission, then to challenge the same before the Hon'ble High Court u/Article 227 of The Constitution of India which has jurisdiction of superintendence over all the judicial and quasi - judicial authorities within the State.

3. Key Words

A) **NA permission:** As per section 44 of MLR Code, 1966, Non - agriculture permission from the Collector of the District is required to be obtained by the applicant under following circumstances:

- For change of use of land from agriculture to any non - agriculture purpose like residential, commercial, industrial or so,
- For change of use of land from any non - agriculture to any other non - agriculture purpose e. g. residential to industrial or industrial to commercial & so on and
- For the same non - agriculture purpose but in relaxation of any of the conditions of the already granted NA permission.
- Any development of land without NA permission is deemed to be unlawful and attracts penalty and prosecution.

B) **Land Use Change:** - The use of land is governed by the zoning provisions of the Development or Regional Plans sanctioned by the Government from time to time. This is so for planned development of the area and to prevent non - conforming land uses. It is regulated through section 44 of MLR Code, 1966 by provisions of NA permission and through section 44 of MR & TP Act, 1966 for approval of layouts/subdivisions of lands.

C) **Government Review:** - To err is human. Government is no exception to it. Hence, MLR Code, 1966 provides for review of any permission granted by the authority. However, in order to prevent its misuse, a safeguard of prior approval from the superior officer has been incorporated for reopening the past permitted cases. Moreover, it has an inbuilt pre - conditions (already explained in the statutory provisions above) without satisfaction of which, review cannot be undertaken; and if undertaken without satisfying the said conditions, then the entire proceedings of review can be challenged before the Judicial authority like High / Supreme Court for declaration thereof as void.

D) **Legal Analysis:** - It means analysis of Rights & Obligations of Government vis - à - vis persons which can withstand and be enforceable by/before/through the court of Law in case of infringement thereof.

E) **Land Acquisition:** - Private lands are frequently required by the Government / Govt. Authorities for various development purposes. It therefore is entitled to procure it despite unwillingness of the owners thereof so long as it is needed for public purpose, it provides for compensation (compensation is not synonymous with market value. It depends upon the statutory objectives to be achieved and may be much below the prevailing market value), and under the procedure established by any Statute. It is interesting to note that solatium is one of the component of compensation (presently 100% of the value determined under LA Act, 2013) which is being provided to the affected persons for the compulsory nature of the land procurement i. e. for the force or precedence over the unwillingness of the owner to part with his land.

F) **Constitutional Rights:** - The Constitution of India provides for enforcement of various rights of individuals in case of infringement thereof by the Government or its agencies/authorities.

- Art.14 provides for equal treatment before law and prevents discrimination within the same class,
- Art.19 provides various freedoms to citizens like freedom of speech & expression, movement within the country, to form association, to practice, against arbitrary arrest etc. and mandamus can be issued by the High/Supreme Court against its violation by any Authority.
- Art.226 provides for enforcement of fundamental rights of individuals in case of breach thereof by the Govt/Authority,
- Art.227 provides power of superintendence to the High Courts over the judicial and quasi - judicial authorities subordinate to it within the State. Under this provision, any unlawful, biased or arbitrary decision of the Government Authority affecting any individual can be challenged before the High Court for declaration thereof as “void”.
- Art.300 - A is a legal right of individual to purchase, hold, develop and dispose of the property according to one’s own wishes but it is subject to the rights of the Government to acquire it provided conditions as specified above are satisfied.

References

- [1] For further details and statutory provisions relatable to Architects & Building consultants for the benefit of clients, refer to the book by the same author entitling: “**Encyclopaedia of Land Laws with Court Judgments: A Ready Reckoner for Architects, Civil Engineers, Valuers, Supervisors, Builders, Developers & Building Consultants**”, [ISBN: 978 93 5566 177 7] which is available on Amazon as well.
- [2] Maharashtra Regional & Town Planning Act, 1966.
- [3] Maharashtra Land Revenue Code, 1966.
- [4] Unified Development Control & Promotion Regulations of Maharashtra sanctioned by Government on 2.12.2020.