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**The State of Maharashtra and ors. Vs. Narayan Agro Udyog Private Ltd. and ors.**

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**Court : Mumbai**

**Decided On : Jul-16-1996**

**Reported in : 1997(1)BomCR21**

**Judge : M.L. Dudhat and ;A.S. Venkatachala Moorthy, JJ.**

**Acts : [Maharashtra Land Revenue Code, 1966](#) - Sections 44(3); Maharashtra Land Revenue (Conversion of Use of Land and N.A. Assessment) Rules, 1969 - Rule 4**

**Appeal No. : First Appeal No. 836 of 1992**

**Appellant : The State of Maharashtra and ors.**

**Respondent : Narayan Agro Udyog Private Ltd. and ors.**

**Advocate for Def. : V.R. Manohar, ;D.S. Bhonde and ;S.V. Pitre, Advs.**

**Advocate for Pet/Ap. : Tulpule, Adv. and ;K.K. Tated, A.G.P.**

**Disposition : Appeal dismissed**

**Judgement :**

**M.L. Dudhat, J.**

1. This first appeal is preferred by the appellants against the Judgment and decree dated 15-2-1992 passed by the Vth Joint Civil Judge, Senior Division, Pune in Special Civil Suit No. 167 of 1990. By the aforesaid Judgment and decree, the trial Court has passed the decree in favour of the respondents/plaintiffs. The respondents/plaintiffs filed the suit, being Special Civil Suit No. 167 of 1990 for a declaration that the suit lands are non-agricultural lands on the basis of the permission deemed to have been granted under section 44(3) of the [Maharashtra Land Revenue Code, 1966](#) (hereinafter referred to as 'the Code of 1966' for the sake of brevity. The plaintiffs also prayed for mandatory injunction for a direction to the appellant No. 4/defendant No. 4 to issue Sanad to the plaintiffs as required under section 44(6) of the Code of 1966 in respect of the suit lands and also for quashing all the proceedings initiated by the defendant Nos. 1 to 4- the present appellants against the plaintiffs-present respondents- under the Bombay Tenancy and Agricultural Land Act (for short, the B.T.& A.L. Act) and the Agricultural Land Ceiling Act. Against the aforesaid Judgment and decree passed by the trial Court, the defendants have preferred this appeal which is subject matter of argument before us.

2. Mr. Tulpule, learned Government Pleader appearing on behalf of the appellants, has contended that the trial Court ought to have dismissed the suit filed by the plaintiffs. The learned Government Pleader, Mr. Tulpule, contended that in fact the application which was filed in by the plaintiffs for converting their lands for non-agricultural use, was in fact incomplete and not in proper form and, therefore, there is no question of applicability of deeming provision under section 44(3) of the Code of 1966. He further contended that admittedly, in this case, there is no permission given by the defendant No. 4-the Tahsildar to the plaintiffs converting their suit lands into non-agricultural use and therefore the defendants are justified in taking various actions as contemplated under the B.T.& A.L. Act and the Agricultural Lands Ceiling Act. Lastly, it was, strenuously, contended by the learned Government Pleader Mr. Tulpule, that in any case the observations made by the trial Court against the defendants, more particularly the defendant No. 4, may be expunged, as they are not warranted.

3. As against this, it was contended by the learned Counsel Mr. Manohar that the decision given by the trial Court is after scanning the evidence on record and the same may be confirmed . He further contended that even as per the admissions given by the defendants, their case, at the highest, is that on 12-1-1988 they have posted applications along with other documents to the plaintiffs. It is also an admitted position that after interpreting section 44(3) of the Code of 1966, the time of 90 days expires on 12-1-1988 and therefore, in any case there is no communication refusing permission from the defendants to the plaintiffs. Further it is contended by Mr. Manohar, learned Counsel appearing on behalf of the plaintiffs that, in fact, the said postal envelop sent by the defendant No. 4 to the plaintiffs, does not contain any refusal and therefore, by deeming provision under section 44(3) of the Code of 1966, the plaintiffs' suit lands were deemed to be agricultural (non-agricultural) lands. Apart from that, it was also contended by the learned Counsel Mr. Manohar that admittedly the postal envelope as sent by the defendant No. 4, was received to the plaintiffs on 18th, i.e. much after the expiry of 90 days from the date of the application and therefore, in view of the provision under section 44(3) of the Code of 1966, the permission is deemed to have given to the suit lands as non-agricultural lands. As regards argument of the appellants that presuming without admitting that the plaintiffs lands were deemed to have been converted into non-agricultural use after 2-1-1988, still, since the plaintiffs failed to put the suit lands to the non-agricultural use, permission which was deemed to have been given is elapsed, more particularly in view of Rule 4(c) of the Maharashtra Land Revenue (Conversion of Use of Land & N.A. Assessment) Rules, 1969. It was contended on behalf of the respondents that by plain reading of section 44(6) of the Code of 1966, the said provision is inapplicable in case where the deeming provision is applicable under section 44(3) of the Code of 1966. Further it was also contended on behalf of the respondents that the appellants are not entitled to take this stand because there is neither pleading nor proof to the effect that the plaintiffs failed to make use of the lands for N.A. purpose within one year from the date of permission or one year from date of deeming position. These are the rival contentions as advanced before us.

4. Short question before us is as to whether by efflux of time of 90 days from the date of the application to convert the suit lands into non-agricultural purpose, the

plaintiffs' suit lands got converted into non-agricultural lands after 12-1-1988 in view of deeming provision, more particularly under section 44(3) of the Code of 1966. Once we come to the conclusion that the use of the suit lands got converted into non-agricultural use under section 44(3) of the Code of 1966, then all the proceeding taken under the B.T.& A.L. Act and Agricultural Lands Ceiling Act are liable to be struck down.

5. Admittedly, on 14-10-1987, the plaintiff No. 3 submitted three application forms before the defendant No. 4 Tahsildar at Mulshi. On 17-10-1987, a statement of the plaintiff No. 3 was recorded by the Circle Officer. On 19-10-1987 the Circle Officer reported to the effect that permission for construction to the plaintiffs be given after consultation with the Town Planning Authorities. Thereafter, since the plaintiffs have received no communication whatsoever from the defendants, more particularly the defendant No. 4, the plaintiffs addressed three letters dated 12-1-1988 which are at Exhs. 177, 178 and 179, inter alia, stating therein that the plaintiffs have preferred applications for converting the suit lands for non-agricultural use on 14-10-1987 and since the plaintiffs have not received any communication till 12-1-1988, the plaintiffs' suit lands were deemed to be converted into non-agricultural use. The plaintiff No. 3 personally delivered these three letters to defendant No. 4 Tahsildar, Mulshi, at Paud. However, it is the case of the plaintiffs that the defendant No. 4 refused to accept the letters tendered personally by the plaintiffs No. 3 and, therefore, the plaintiff No. 3 was constrained to post these letters by registered post with acknowledgment due from Paud Post Office which was very near to the Tahsildar's office at Paud. At this stage, we may mention that the defendants denied that the plaintiffs tendered three letters dated 12-1-1988 to the defendant No. 4 personally. But according to our opinion, taking into consideration the evidence on the record and the subsequent events, it appears that the plaintiff No. 3 has, in fact, delivered these letters to the defendant No. 4 and on his refusal to accept the same, the plaintiff No. 3 was constrained to send these letters by registered post. It is pertinent to note that the plaintiff No. 3 is the resident of Pooona. Paud is the place where Tahsildar defendant No. 4's office is situated, is about 46 kms. from Pooona. Had the plaintiffs decided only to send the letters by registered post, he could have done so from the post office from Pooona and there was no need to travel to Paud than to post it. This itself shows

that the evidence as led by the defendants to show that the defendant No. 4 had not refused delivery of the three letters dated 12-1-1988, appears to be untrustworthy.

6. After sending the aforesaid three letters dated 12-1-1988 by registered post, the same was received by the defendant No. 4's office and to that effect there are acknowledgment which are at Exhibits 183, 184 and 185. Apart from that, it is contended by the learned Counsel Mr. Manohar that the stand taken by the defendants that the defendant No. 4 had not accepted the three letters dated 12-1-1988, is a deliberate, because it is the specific case of the plaintiffs that on 12-1-1988 he went to the defendant No. 4 to give these letters. He gave the said letters to the defendant No. 4 in his office. The defendant No. 4 read those three letters and thereafter returned the said three letters by refusing the said service. This was done by the defendant No. 4 deliberately because after reading the letters, the defendant No. 4 had a sinister intention to undo what has been done in favour of the plaintiffs due to efflux of time of 90 days and it is, therefore, on the same day, the defendant No. 4 despatched all the applications sent by the present plaintiffs along with other documents with a view only that the plaintiffs should not claim the status of non-agricultural use of the suit lands due to efflux of time. Here, we may further point out that the defendant No. 4 has also not been examined in the trial Court.

7. On the same day, i.e. 12-1-1988, the defendant No. 4 sent a parcel which was received by the plaintiffs on 18-1-1988. Along with the said parcel, the plaintiffs also received one register from the Tahsildar office dated 6-1-1988. Thereafter, on 28-1-1988, the plaintiff No. 3 received letter dated 25-1-1988 addressed by the Tahsildar-defendant No. 4 demanding documents sent inadvertently. When a person from the Tahsildar's office came to take back the documents from the plaintiff No. 3, the plaintiff No. 3 asked him to make panchanama of the return of the documents which the said person coming from the defendant No. 4's office refused and, therefore, those documents were not given. Thereafter, on 8-12-1990, in the newspaper 'Daily Sakal' there was a press statements by Mr. Kunte the defendant No. 2 who was the Additional Collector, Pune, wherein he has stated that the lands are not converted into N.A. use. The lands were in green

belts and they are owned by the Government. To the said lands, a reply was given by the plaintiffs by notice under section 84-C of the B.T. & A.L. which appeared in 'Kesari' daily from Pune. Thereafter, the plaintiffs also received notice under the Agricultural Lands Ceiling Act. In view of this attitude and harassment from the defendants, the plaintiffs were constrained to file the present suit for various reliefs as stated above.

8. Section 44(3) of the Code of 1966 is as under : ---

'If the Collector fails to inform the applicant of his decision within ninety days from the date of acknowledgment of the application, or from the date of receipt of the application - if the application is not acknowledged, or within fifteen days from the date of receipt of application for a temporary change of users or where an application has been duly returned for the purposes mentioned in Clause (b) of sub-section (2), then within ninety days or as the case may be, within fifteen days from the date on which it is again presented duly complied with, the permission applied for shall be deemed to have been granted, but subject to any conditions prescribed in the Rules made by the State Government in respect of such user.'

9. It is clear from the phraseology used in the aforesaid provision that if the Collector fails to inform the applicant, his decision within 90 days from the date of acknowledgment of the application or the date of receipt of the application, then the permission for conversion into non-agricultural shall be deemed to have been granted subject to any condition prescribed in the Rules made by the State Government in respect of user. Admittedly, here in this case an application was submitted by the plaintiff No. 3 in respect of the suit lands on 14-10-1987 and period of 90 days comes to an end on 12-1-1988 (Oct. 17 days, Nov. 30 days, Dec. 31 days, Jan. 12 days = 90 days ). It is an admitted position that the defendants have not given any reply to the plaintiffs on or before 12-1-1988. The plaintiffs have also specifically stated that he has received no communication till 12-1-1988 and therefore on 12-1-1988 he placed the said fact on record by addressing a letter to the defendant No. 4. It is the case of the defendants that they have sent one envelope to the plaintiffs on 12-1-1988. In the said envelope the plaintiffs received certain documents but there was no communication received

from the defendant No. 4. At this stage, we may point out that as per the defence taken by the defendants, the defendant No. 4 sent some letter dated 4-12-1987 to the plaintiffs. However, the plaintiffs denied that they received any letters much less the letter dated 4-12-1987 from the defendant No. 4. Apart from that, the defendants failed to examine as to who was the scribe of the said letter, failed to produce the said register at the relevant time and, therefore, it is difficult to rely on the stand taken by the defendants that they have sent some communication on 4-12-1987. Apart from that, the stand taken by the defendants addressing a letter dated 4-12-1987, is also belied by the register produced which does not show such type of communication. The defence witness examined by the defendants admitted in the cross-examination that the reply to the application for converting lands into non-agricultural use, are sent by registered post with acknowledgment due. Admittedly, the defendants have not sent anything by the registered post. They have failed to examine the scribe of the letter and also failed to examine the peon, who had gone to put the letter into course of transmission. In view of this, according to our opinion, the stand taken by the defendants that the defendant No. 4 sent the letter dated 4-12-1987, is just an after thought only to defeat the rights of the plaintiffs acquired by them under section 44(3) of the Code of 1966. The learned Judge has, in fact, made observations against the defendants, more particularly the defendant No. 4 to the effect that the said document is a got up document brought on record only to defeat the rights of the plaintiffs. We are also of the same opinion, but taking into consideration the fact that the letter dated 4-12-1987 produced by the defendants which is at Exh. 236, is not signed by any of the defendants and defendant No. 4 is not examined by the defendants, it will be very difficult, as contended by the Government Pleader Mr. Tulpule, to fasten blame individually on defendant No. 4 and, therefore, the observations made to that effect by the trial Court are liable to be expunged.

10. This takes us to the last part of the argument as advanced by Mr. Tulpule on behalf of the appellants/original defendants. According to him, presuming without admitting that by efflux of time after 12-1-1988 the land was put to non-agricultural use, still, since the plaintiffs failed to put the said land into non-agricultural use, the deemed permission granted in their favour from 13-1-1988, has elapsed after expiry of one year. According to our opinion, there is no substance in this

contention. Firstly there is no pleading in the written statement filed by the defendants to that effect that the non-agricultural permission got in favour of the plaintiffs lapsed because of not putting the lands for non-agricultural use for one year. Secondly, if it is the contention of the defendants that the land was not put to non-agricultural use for more than one year, the burden is solely on the defendants to show that the lands were not put to non-agricultural use. Unfortunately, there is no evidence led by the defendants to fortify the aforesaid contention.

Rule 4(c) of the Maharashtra Land Revenue (Conversion of Use of Land and Non-Agricultural Assessment), Rules, 1969, is as under :

(c) 'The applicant shall commence the non-agricultural use applied for within one year from the date of the order made by the Collector in that behalf; 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 the aforesaid Rules, the applicant shall commence non-agricultural use applied for within one year from the date of the order made by the Collector in that behalf failing which permission shall be deemed to have been lapsed. Since in this rule, the legislature has used the words 'from the date of the order of the Collector', this provision is applicable only in respect of non-agricultural use granted by the order of the Collector and the same will be inapplicable in respect of the cases coming within the purview of deeming provision under section 44(3) of the Code of 1966. Taking any view of the matter, this argument as advanced by the learned Government Pleader, is liable to be turned down.

11. In view of this, the appeal filed by the appellants Government is dismissed with costs, except as regards the observations made by the trial Court against the defendant No. 4 and the judgment and decree passed by the trial Court is confirmed except the observations made by the trial Court as against the defendant No. 4.

12. Certified copy expedited.

