
(2008) 03 BOM CK 0112

In the Bombay High Court

Case No : Writ Petition No. 8910 of 2007

Anil Kumar Gokuldas Rai

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 44, 44(1)(b)

Citation : (2008) 4 ALLMR 397 : (2008) 4 MhLj 55

Hon'ble Judges : D.B. Bhosale, J

Bench : Single Bench

Advocate : M.M. Sathaye, for the Appellant; V.S. Mhaispurkar, AGP for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Bhosale, J.—Heard learned counsel for the parties.

2. This writ petition impugns an order dated 29-3-2007 passed by the Divisional Commissioner, Nashik Division, Nashik, in RTS Appeal No. 343 of 2006, by which the said appeal has been dismissed and the order dated 10-4-2006 passed by the Additional District Collector, Nashik has been confirmed. By the impugned orders, the Authorities below have levied forty times penalty for unauthorised use of NA (residential) as NA (commercial) for the period from 1998-2005.

3. The petitioner is the owner of City Survey No. 1068/75C/ID, admeasuring 2023.41 sq. metres, (for short, "the said plot") situated at Manmad, Taluka Nandgaon, District-Nashik. The said plot was purchased by the petitioner's father by a registered sale deed dated 21-9-1972 from Mathurabai Deshmukh. It was already assessed to NA (Residential) purpose, under an order passed way back in the year 1933. In 1998, the petitioner submitted plans for construction of a hotel and shopping complex (for short, "the commercial complex") on the 1410 sq. meters out of the said plot and, accordingly, a commencement certificate under Permission No. 1744 dated 7-8-1998 was granted by the concerned

authority. Though the petitioner in the writ petition claims that he could not start the construction till 2003, he has clearly admitted in his statement dated 5-4-2005, annexed to the reply affidavit, that he commenced the construction of the commercial complex in 1998 itself. In view thereof respondent No. 2, vide notice dated 11-3-2005, demanded Rs. 1,79,830.00, which includes forty times penalty, by making assessment of the said plot for unauthorised N.A use from 1998 till 2005. The petitioner claims that forty times penalty thereafter was brought down to ten times and, accordingly, a demand was made vide notice dated 5-4-2005. No such order is placed on record on the basis of which the penalty was brought down from forty times to ten times. Assigning the very same reason, respondent No. 1, once again, demanded N.A assessment of Rs. 1,81,280/- from the petitioner for unauthorisedly changing the N.A user of the said plot vide notice dated 22-11-2005. That order was carried in appeal before the Divisional Commissioner who, by the impugned order, dismissed the appeal.

4. Thus, the record clearly reveals that the permission for N.A use of the said plot for residential purpose was granted long back. In 1998, the petitioner started construction of the commercial complex and in 2003, for the first time, he applied for seeking conversion of the use of the said plot from residential to commercial use as provided for by clause (b) of sub-section (1) of section 44 of the Maharashtra Land Revenue Code (for short, "the Code"). By the impugned orders, the concerned authorities have levied forty times penalty on the petitioner for unauthorised N.A commercial use and demanded Rs. 1,81,280/-. It is against the backdrop of these facts Mr. Sathaye, learned counsel for the petitioner, vehemently submitted that the authorities below are wrong in imposing forty times penalty from 1998. He submitted that even if it is accepted that the construction of the commercial complex was started in 1998, the petitioner cannot be said to have had put the said plot to commercial use till 2003-2004 and, therefore, the Collector was wrong in demanding NA tax/penalty for the period between 1998-2003. He submitted that the character of the said plot would not stand altered from residential use to commercial as contemplated u/s 44(I)(b) of the Code from the date of commencement of the construction of the commercial complex but it would alter only when such commercial complex is put to NA (commercial) use. In other words, he submitted, for levying NA tax/penalty the date of commencement of the construction is not relevant but the date when such structure is put to actual commercial use would be relevant. He submitted, in the present case, the relevant date for assessing the N.A tax is not the date on which the construction of the commercial complex commenced but the date on which the plot/such construction is actually put to commercial use, which happened in 2003-2004. In support of this proposition, he placed heavy reliance upon the judgment of this Court in *Sou. Jamunabai Parmananddas Shah and Others Vs. Bajirao Seetaram Kalbhor and Others*, . He then submitted that once having reduced the penalty from forty times to ten times, it was not open to demand forty times penalty once again. Mr. Sathaye did not urge any other contentions. On the other hand, learned AGP submitted that the judgment in

Jamunabai's case has no application to the facts of the present case. She submitted that though the petitioner had applied for conversion of residential use to commercial, he started using the said land for commercial purpose from 1998 when he started construction of the commercial complex and in view thereof the concerned authority has rightly passed the order, impugned in the present writ petition. She further submitted that there is no order on record by which the penalty was reduced to ten percent and, therefore, the authorities below were right in demanding forty times penalty.

5. The judgment in case Jamunabai's case, in my opinion, is of no avail to the petitioner. The basic question that fell for the consideration of the learned Single Judge in that case was as to when and under what circumstances can it be said that the character and definition of the agricultural land stands altered to non-agricultural land pursuant to the permission being granted by the Collector for non- agricultural use. It appears, in that case, the N.A order was made on 9-10-1964 and under the conditions specified in the order the applicant was supposed to commence N.A use within a period of six months from the date of the order, failing which the order was to get cancelled. Due to some litigation, it appears that the applicant in that case could not commence the N.A use for long time and against that backdrop the learned Single Judge had taken a view that on permission being granted for conversion of land from agricultural to non-agricultural use, the point of time at which the character of the lands get altered is not on the date when the order granting permission u/s 44 of the Code is passed but from the date on which the lands are, in fact, put to non-agricultural use. A bare look at the facts and circumstances against which the learned Single Judge had taken the aforesaid view, it is clear that the facts in the present case are totally different.

6. In the present case, admittedly, the permission was granted for N.A use in 1933 and under that permission the petitioner was supposed to put the land for residential use. In 1998, the petitioner started construction of the commercial complex on the very same land without either informing to the Collector or getting N.A permission changed from residential to commercial use and almost at the verge of completion of the construction of the commercial complex, in 2003, he applied for conversion of NA-residential purpose to NA-commercial use. Admittedly, the construction of the commercial complex commenced in 1998. In my opinion, the character of the land gets altered the moment non-agricultural activity, such as a construction on the agricultural land, commences and not from the date on which such residential/commercial complex is put to use. In other words, commencement of construction activity on the agricultural land, irrespective of the fact whether it is for residential or commercial, amounts to putting the agricultural land to NA use and the commencement of such activity, is the point of time of change and not the date of putting the structure in NA use. In any case, one cannot commence construction on the agricultural land unless he seeks conversion of use of such land for non-agricultural purpose. In the present case, merely because the application for conversion of use of residential

purpose to commercial use is made in 2003 does not mean that the petitioner did not commence the commercial use till then since as it is clear that the petitioner commenced the construction of the commercial complex in 1998 after obtaining commencement certificate from the Local Authority. It was not open to the petitioner to make construction of the commercial complex on the NA-residential plot in 1998 without seeking its conversion as contemplated by section 44(1)(b) of the Code. In the circumstances, it must be held that the said plot was put to NA-commercial use in 1998 and it has rightly been assessed for NA tax by the Authorities below for the period 1998-2005. The contentions urged by Mr. Sathaye must be rejected. His contention that the penalty was reduced to ten times does not find any support since as there is no such order on record. In the circumstances, this petition deserves to be dismissed. Order accordingly.