

GAHC010179742022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/285/2022

THE UNION OF INDIA AND 2 ORS.
REPRESENTED BY ITS SECRETARY, MINISTRY OF DEFENSE,
GOVERNMENT OF INDIA, NEW DELHI, INDIA

2: STATION COMMANDER (BRIGADIER) JORHAT MILITARY STATION
STATION CELL
HQ 41 SUB AREA
PIN-908641
C/O 99 APO

3: OFFICIATING ADMINISTRATIVE COMMANDANT (COLONEL) JORHAT
MILITARY STATION
STATION CELL
HQ 41 SUB AREA
PIN-908641
C/O 99 AP

VERSUS

DR. N SAHEWALLA AND COMPANY PVT. LTD. AND 2 ORS.
HAVING ITS REGISTERED OFFICE AT BORDOLOI AVENUE, AMC ROAD,
DIBRUGARH (ASSAM) IS REPRESENTED BY SRI KAMAL JAIN, S/O LATE
TR JALAN, R/O SEUNI ALI, P.O. AND P.S.-JORHAT (ASSAM)

2: JORHAT DEVELOPMENT AUTHORITY
JORHAT
REPRESENTED BY THE CHAIRMAN (IN CHARGE)
AT ROAD
MALOW ALI
JORHAT
ASSAM
PIN-785001

3: THE CHAIRMAN

JORHAT DEVELOPMENT AUTHORITY
AT ROAD
MALOW ALI
JORHAT
ASSAM
PIN-78500

Advocate for the Petitioner : MR. S K MEDHI
Advocate for the Respondent : MR G N SAHEWALLA

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (CAV

Date 19.10.2023

(Kardak Ete, J)

Heard Mr. S. K. Medhi, learned Central Government Counsel for the appellant and also Mr. G. N. Sahewala, learned Senior Counsel assisted by Mr. H. K. Sarma, learned counsel for respondent No.1.

2. This intra court appeal has been preferred by the Union of India represented by the Secretary, Ministry of Defence, Government of India and 2 others against the judgment and order dated 04.08.2022 passed by the learned Single Judge in WP(C) No. 4153/2023 whereby the writ petition filed by the respondent No.1/writ petitioner has been disposed of by directing the respondent No.3 to verify the necessary facts and to pass a fresh order pertaining to the building construction permission issued to respondent No. 1/writ petitioner.
3. The facts of the case, in nutshell, are that the respondent No.1/writ petitioner a registered company having purchased the plot of land in Jorhat town within the Jorhat Municipal Board Area, which is situated contiguous

to the land and building identified as “Jorhat –Lichubari Army Camp’, had applied for ‘No Objection Certificate’ (in short NOC) from the Jorhat Development Authority for construction of a multistoried building for setting up a multi Specility hospital and on consideration of such application, the respondent No.3 had granted NOC vide building permission dated 04.03.2022. Thereafter, the respondent No.1/writ petitioner had commenced construction work and a boundary wall was also constructed. However, when the construction of the building was under progress, the appellant No. 3 had written a letter dated 06.06.2022 to the respondent No.3 with a request to cancel the NOC by stating that request for issuance of NOC made to it by the respondent No.1/writ petitioner had been rejected. Acting on the basis of the letter dated 06.06.2022 of the appellant No. 3/Army Authorities, the respondent No.3 issued the order dated 08.06.2022 by which the NOC for building permission dated 04.03.2022 has been suspended. Being aggrieved by the order dated 08.06.2022 passed by the respondent No.3, the respondent No.1/writ petitioner has approached this Court challenging the said order by filing the writ petition (supra).

4. The writ petition was disposed of on 04.08.2022 by the learned Single Judge by setting aside the order dated 08.06.2022 with a direction to the respondent No.3 to verify the necessary facts as there was no indication as to whether the boundary wall constructed by the petitioner did comply with the terms of notification dated 21.10.2016. Hence, this present Writ Appeal by the Appellants.
5. Mr. S. K. Medhi, learned CGC appearing for the appellant submits that the learned Single Judge has failed to consider that the guidelines of

Ministry of Defence dated 21.10.2016 is under review vide Ministry of Defence letter dated 20.02.2020 and the guidelines issued by the Ministry of Defence, Government of India vide Circular dated 18.05.2011 is only to be complied with as per the Director General, Lands Works and Environment integrated Headquarters of Ministry of Defence letter dated 14.02.2022. He further submits that the hospital wall is being constructed at mere gap of one meter from the wall of Jorhat Military Station and thus, the construction is in direct violation of NOC guidelines formulated by the Ministry of Defence dated 18.05.2011. He further submits that the learned Single Judge has unjustly segregated construction of wall with the construction of building which clearly violates the Section 6 of the Works of Defence Act 1903. Mr. S. K. Medhi while relying on the case of *Union of India vs M/S S. R. Land Escard Private Limited and others* by the Division Bench of Rajasthan High Court in *D. B. Spl. Appl. Writ No. 744/2018* submits that the Hon'ble Rajasthan High Court has held that the Municipal Corporation or any other body or individual shall not approve, regularize or give permission for any building without following and adhering to the guideline issued by the Ministry of Defence dated 18.05.2011 till further orders. Any construction contrary to the guideline shall be strictly prohibited till further orders. Therefore, the impugned judgment and order dated 04.08.2022 passed by the learned Single Judge and the consequential order of Jorhat Development Authority dated 11.08.2022 are liable to be set aside and quashed.

6. Mr. Medhi, learned counsel while referring to the guideline dated 21.10.2016 submits that assuming that the guidelines dated 21.10.2016 prevails over the guidelines dated 18.05.2011, even then clause 3 of

guidelines dated 21.10.2016 provides that where local Municipal laws requires consultation or approval of NOC from the LMA/Station Commander before a building plan is approved, compliance to such statutory requirement shall continue to be applicable and the procedure for issuance of NOC shall be same as contained in circular dated 18.05.2011. Therefore, the NOC to be obtained from the appellant/Competent Authority as per the procedure contained in the circular dated 18.05.2011.

7. On the other hand, Mr. G. N. Sahewala, learned Senior counsel for the respondent No.1/writ petitioner submits that petitioner is seeking to raise permanent construction over its own land. As per the guideline issued by the Ministry of Defence on 18.05.2011, it was laid down that for any construction coming up within 100 meters of a Defence Installation/Establishment and 500 meters in case of building more than four storied, the NOC from the State Commander would be required as the same might cause security hazard to such Defence installation. However, subsequently the Ministry of Defence, Government of India vide notification dated 21.10.2016 has modified the circular dated 18.05.2011 whereby the radius of such restriction in construction has been reduced to 10 (ten) meters from the outer wall of such Defence Installation/Establishment. He further submits that the construction of the multi storied building for establishment of a super specialty medical facility being raised by the petitioner is at least seventy meters away from the defence installation and therefore under the existing circular dated 21.10.2016, there was no requirement for the respondent No. 1/writ petitioner to have obtained any NOC from the appellant Nos. 2 and 3.

8. Mr. Sahewala, learned Sr, counsel further submitted that the similar issue

has also been considered by the Hon'ble High Court of Delhi in the case of Union of India vs. GNCT of Delhi and others in WP(C) 6901/2017 wherein while taking note of notifications issued by the Ministry of Defence in the year 2011 as well as the subsequent notification issued on 21.10.2016, the Delhi High Court has held that NOC from defence authorities could be required only if the construction is raised within the limit of 10 (ten) meters from the outer wall of the Defence Establishment. He urged that the boundary wall which was raised within the restricted zone of 10 meters has already been dismantled. He further submits that if the construction of hospital building by the respondent No.1/writ petitioner is not allowed, the same would not only cause serious infringement of the fundamental right under Article 19(1)(g) available to the respondent No.1/writ petitioner but would also stand to deprive the public of that area from the facilities of super specialty hospital.

9. We have considered the submissions advanced by the learned counsel for parties and also perused the materials on record.
10. The issue involved in this proceeding is as to the applicability of the particular guideline issued by the Ministry of Defence, Government of India, for maintaining distance while carrying out construction within the vicinity of any defence installation. If Guideline of 2011 is applied NOC from the appellant No. 2 and 3 would be required for carrying out building construction undertaken by the respondent No.1/writ petitioner. However, if the guideline dated 21.10.2016 are applied, there would be no requirement to acquire a NOC from the appellant Nos. 2 and 3 as admitted the building is being raised about 70 meters away from the Defence installation.

11. On perusal of the guidelines for issuance of NOC for building construction dated 21.10.2016, it appears that same has been issued with reference to circular dated 08.05.2011 read with amendments regarding the grant of NOC from the Local Military Authority for construction of building in the vicinity of Defence establishment. We take note that the said guidelines dated 21.10.2016 clearly indicates that in view of the large number of representations received from elected representatives to review the guidelines issued in 2011 as difficulties are being faced by public in constructing buildings on their own land and pending finalization of the amendment to the Works of Defence Act, 1903, the Government has decided to amend the guidelines issued under circular dated 18.05.2011. At clause 2(a) of the guidelines it provides, which is reproduced herein below, as follows:

“(a) Security restrictions in respect of Defence establishments/installations located at 193 stations as listed in Part A of Annexure of this circular shall apply up to 10 meters from the outer wall of such Defence establishments/installations to maintain clear line of sight for effective surveillance. Any construction or repair activity within such restricted zone of 10 meters will require prior No Objection Certificate (NOC) from the Local Military Authority (LMA)/Defence establishment.”

12. On bare reading of the above clause it transpires that security restriction in respect of Defence establishment/installations would be applied up to 10 (ten) meters from the outer wall of such Defence establishment/installation to maintain clear line of sight for effective surveillance and any construction or repair activity within such restricted zone of 10 (ten) meters will require prior NOC from the Local Military Authority/Defence establishment. In the other words the NOC from the concerned Military Authority will be required if the construction is sought to be raised within a radius of 10 (ten)

meters from the outer wall of such Defence Installation/Establishment.

13. On careful perusal of the relevant clauses of the guidelines dated 21.10.2016 it is clear that the said notification has been issued by way of amendment of the circular dated 18.05.2011 in so far as the requirement for maintaining distance while raising construction in the vicinity of the Defence Installation/Establishment. Apparently the guidelines dated 21.10.2016 supersede the earlier circular dated 18.05.2011, therefore, we are in total agreement with the view taken by the learned Single Judge that the guidelines dated 21.10.2016 hold the field. In the case at hand we also take note that no construction can be raised within 10 (ten) meters of the Defence installation/establishment without obtaining prior NOC from the Local Military Authority/Defence establishment, however, no such NOC from the Local Military Authority/Defence establishment would be required if the construction is beyond 10 (ten) meters from the outer wall of the defence Installation/Establishment.
14. We also take note of the fact that vide communication dated 04.04.2022, the Chairman Jorhat Development Authority (respondent No. 3 herein) which was addressed to the appellant No.3 that the construction undertaken by the respondent No.1/writ petitioner is in between 80 to 100 meters away from the boundary wall of the Defence establishment/installation thereby no building permission within 10 (ten) meters has been accorded to the respondent No.1/Writ petitioner and the construction of building falls outside 10 (ten) meters distance from the Defence Installation.
15. The learned Single Judge has, after careful consideration of the materials on record, observed that there is no indication as to whether the boundary

wall constructed by the respondent No.1/writ petitioner did comply with the terms of the notification dated 21.10.2016 on which a factual verification of the said aspect of the matter would be called for.

16. This Court on 19.07.2023 having considered the argument of the learned counsel for the appellants which was limited to the issue of proposed boundary wall being raised by the respondent No.1/writ petitioner within 10 (ten) meters of Defence installation precincts who urged that boundary wall cannot be constructed in that perimeter because that would be violative of the guidelines dated 21.10.2016, directed the learned counsel for the appellants to take instructions from the authorities concerned as to whether the boundary wall should be allowed to be constructed on the land of the respondents or that the authorities are ready to face the risks to the Defence Installation by the absence thereof as this Court felt that allowing the hospital to function adjacent to the Defence Installation without there being any safety/boundary wall would rather pose a risk to the security of the Defence Installation. The learned counsel for the appellants has stated that the appellant authorities are not agreeable to the observations made by this court regarding the issue of permitting the respondent No.1 to raise a safety/boundary wall on its land for the hospital. The learned counsel for the appellants categorically submits that the Defence Installation is already encumbered by a high boundary wall and thus, there is no possibility of Defence Installation facing any risks even if the safety/boundary wall is not constructed by the respondent No.1/writ petitioner.

17. We also take note that pursuant to the judgment and order dated 04.08.2022, the respondent No.3 has carried out the verification as

directed by the learned Single Judge. On such verification the respondent No.3 has vide letter dated 11.08.2022 has issued a fresh permission to the respondent No.1/writ petitioner for construction by stating that vide the said letter it issued a fresh permission pertaining to building construction permission wherein the earlier permission thereby allowed the construction and directed to maintain *status-quo* in respect of the boundary wall constructed on the land of the company until further orders.

18. We are in agreement with the learned Single Judge that the guidelines dated 21.10.2016 supersedes the circular dated 18.05.2011 and as such the guidelines dated 21.10.2016 hold the field. Even if the guidelines dated 21.10.2016 were subjected to review/amendment as urged by Mr. Medhi, we are of the *prima facie* opinion that such amendment if any would have a prospective effect and may not prejudice/frustrate the decisions already taken under the guidelines 2016.

19. In view of our discussions and conclusion arrived at herein above, we do not find any infirmity in the impugned judgment and order dated 04.08.2022 passed by the learned Single Judge in WP(C) No.4153/2022 warranting interference and accordingly, same is affirmed.

20. The Writ Appeal stands dismissed, accordingly.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant