

GAHC010066692024



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

Case No. : WP(C)/1836/2024

RAM SANKAR SINGH
S/O- LATE JAGADISH SINGH,
R/O- BHUTNATH ROAD, MILAN PATH,
P.O. AND P.S.- BHARALUMUKH,
DIST.- KAMRUP(M), PIN- 781009,
ASSAM,

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS,
NORTH BLOCK, CABINET SECRETARIAT,
NEW DELHI- 110001.

2:THE MINISTRY OF DEFENCE
GOVT. OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
IN THE SOUTH BLOCK SECRETARIAT BUILDING
RAISINA HILL

NEW DELHI- 110001.

3:THE COMMANDANT
STATION CELL HQ 51
SUB-AREA
NARENGI CANTONMENT- 781037

KAMRUP(M)
ASSAM.

4:THE GROUP COMMANDER

MES QUARTERS
SHANTIPUR MILITARY STATION

SHANTIPUR
GUWAHATI- 781009
ASSAM.

5:THE LIEUTENANT COLONEL

STAFF OFFICER (ADM) FOR GROUP COMMANDER

MES QUARTERS
SHANTIPUR MILITARY STATION

SHANTIPUR
GUWAHATI- 781009
ASSAM.

6:THE GUWAHATI MUNICIPAL CORPORATION
REPRESENTED BY THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION

PANBAZAR
GUWAHATI- 781001.

7:THE CHIEF EXECUTIVE OFFICER
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
STATFED BUILDING
GMCG ROAD

BHANGAGARH
GUWAHATI- 781005

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocates for the petitioner	:	Mr. P Upadhyay
Advocates for the respondents :		Ms. B Sarma
		CGC

JUDGMENT & ORDER(ORAL)

06.08.2024

Heard Mr. P Upadhyay, the learned counsel appearing on behalf of the petitioner. Ms. B Sarma, the learned CGC appears on behalf of respondent Nos.1, 2, 3, 4 and 5. None appears on behalf of the respondents in the Guwahati Municipal Corporation and or the Guwahati Metropolitan Development Authority.

2. The petitioner herein is aggrieved by the issuance of the communication dated 11.01.2024 issued by the respondent No.5 thereby directing the petitioner not to proceed with the construction without obtaining the 'No Objection Certificate' (for short, the 'NOC') from the Local Military Authority through the Guwahati Metropolitan Development Authority (for short, the 'GMDA').

3. The petitioner herein was also intimated that in absence of a NOC from the Local Military Authority, the office of the respondent No.5 shall initiate an FIR as per the Government procedure. It is seen from a perusal of the impugned order that the same has been done on the basis of the guidelines for issuance of NOC for building construction dated 21.03.2023.

4. This Court also further takes note of that the petitioner herein had been duly issued the NOC for construction as well as a planning permit both dated 09.01.2023 by the GMC as well as the GMDA respectively. Taking into account

that it is on basis of the guidelines dated 21.03.2023 that the respondent No.5 had issued the impugned communication, this Court finds it relevant to take note of the said guidelines.

5. A perusal of the guidelines dated 21.03.2023, more particularly at Clause 3(b) shows that where the local municipal laws do not so require, yet the Station Commander feels that any construction coming up within 100 meter (for multistorey building of more than four storeys, the distance shall be 500 meters) radius of a Defence establishment can be a security hazard, the Station Commander is required to immediately move the next higher authority in the chain of command and in case the next higher authority is also so convinced about the existence of a security hazard, then the Station Commander may convey his objection/views to the local municipality or the State Government Agencies. In case the local municipality or the State Government Agencies do not take cognizance of the said objection then the matter would be taken up through the higher authorities, if need be, through the AHQ/MoD.

6. It is also seen in Clause 4(d) that in case the views of the Station Commander is not required as per the bye-laws, and the construction is not seen as a security threat by the Station Commander, then the Station Commander is neither required to raise any objection nor issue a NOC and the individual should be allowed to construct on his property without any interference.

7. This Court upon perusal of the above guidelines finds it that there has to

be a subjective satisfaction arrived at by the Station Commander as well as its immediate higher authority that there is a security hazard in respect to the construction coming within the ambit of 100 meters of a Defence establishment or 500 meters if it is a multistoried building of a Defence establishment.

8. This Court has duly perused the impugned communication dated 11.01.2024 wherein there is not a single whisper that there is any security threat. Merely on the basis that it is a restricted zone, the respondent No.5 had issued the said communication which is not only contrary to the guidelines dated 21.03.2023, but also clearly shows the non-application of mind of the respondent authorities. Accordingly, the impugned communication dated 11.01.2024 is set aside and quashed.

9. With the above observation(s) and direction(s), the instant writ petition stands disposed of.

JUDGE

Comparing Assistant