

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION Nos. 13841 and 13969 of 2016

COMMON ORDER:

The petitioner in W.P. No.13841 of 2016 seeks to declare the action of respondents in interfering with his construction work in Plot Nos.28, 29, 30, 70, 62, 94, 98, 99, 101, 86, 87, 88 and 33 (admeasuring a total of 2715 square yards) in Survey Nos. 42/A, 42, 42/1, 42/2, 42/3, 42/4 and 42/EE/5 of Gandhamaguda village, Peerancheruvu Grampanchayat, Rajendranagar mandal, Ranga Reddy District, as illegal, arbitrary and contrary to G.O.Ms.No.7 dated 05.01.2016 and Guidelines dated 18.05.2011 issued by the 1st respondent, and consequently prays to issue mandamus to the respondents not to interfere with his construction work. The petitioner in W.P.No.13969 of 2016 seeks a similar relief stating that the respondents are interfering with his construction work in Plot Nos.12, 13, 14, 15/P, 26, 27, 35, 36, 37, 38, 51, 58, 61, 69, 82, 83, 84, 85 & 95 (admeasuring a total of 3.812 square yards) in the same Survey Numbers of Gandhamaguda village.

2. The issue raised in both the petitions is one and the same and therefore, this Court decided to dispose of both the petitions by this common order and the facts in W.P.No.13841 of 2016 will be discussed *inter alia*.

3. It is stated in the writ affidavits that the petitioners are absolute owners and possessors of the respective lands mentioned above, having purchased the same through registered sale deeds. Their lands are situated about 500 meters away from Defence Establishments/Sites. In the year 2006, they made a layout in the lands and obtained construction permission from the

Grampanchayat for constructing Ground + First floor. When the petitioners started construction activity in the said plots, the 5th respondent interfered stating that the petitioners should obtain No Objection Certificate (NOC) from the Defence Establishment. The petitioners informed the 5th respondent that their construction activity is about 500 meters away from the Defence Sites and as per G.O.Ms.No.7 dated 05.01.2016 issued by the 2nd respondent, NOC should not be insisted upon by the Defence Establishment for construction activity. It is further stated that as per the Guidelines issued by the 1st respondent-Ministry of Defence, even if construction activity is carried out within 100 meters distance from the Defence Establishments, the concerned Station Commander should inform his superior authorities or the local authorities of the State Government, but cannot interfere with the construction or insist for production of NOC. It is the grievance of the petitioners that though they adhered to the Guidelines issued by the 1st respondent and were also granted construction permission by the Grampanchayat, the 5th respondent is interfering with their construction work and insisting for NOC. It is also their grievance that though the Village Sarpanch represented to the 3rd respondent on 07.04.2016 seeking NOC, the respondents have not acted upon their representation till date.

4. Learned counsel appearing on behalf of the petitioners submits that recently in the month of March, 2016, the respondents started to interfere with the construction activity and stopped the petitioners from proceeding further with the construction. He further submits that though the petitioners informed the respondents that they have no power or authority to interfere with the construction, still they are interfering. The petitioners also informed the respondents about G.O.Ms.No.7, dated 05.01.2016, which was issued by 2nd

respondent, and as per Amendment -4 in the said G.O., the Defence authorities should not insist for NOC, but still the 5th respondent insisted for NOC stating that it is not relevant for them and the petitioner has to compulsorily obtain NOC from the defence establishment.

5. The respondents have filed counter affidavit wherein it is stated that the petitioners have not obtained Security Clearance from the local military authority and that it is mandatory for the petitioner to obtain Security Clearance from the local military authority, i.e., Headquarter Telangana & Andhra Sub-Area, vide G.O.Ms. 86 dated 03.03.2006 and G.O.Ms.No.249 dated 16.03.2009. As per the said G.O., all the persons desirous of constructing within 500 metres of defence land boundary are required to obtain Security Clearance. In Para-4 of the counter affidavit, it is specifically stated that the petitioners are misleading the Court and only partially quoted the Amendment No.4 in G.O.Ms.No.7 dated 05.01.2016. The said amendment states that *“in case of sites abutting to defence establishments, NOC from Defence authorities need not be insisted. However, it will be the responsibility of the applicant to follow the applicable rules as prescribed by the defence authorities in their rules.”* It is further stated in the counter that the petitioner has quoted only first-half of the amendment and deliberately omitted the second-half in an attempt to mislead the Court and to cover his misdeeds. The amendment clearly stipulates that *“it will be the responsibility of the applicant to follow the applicable rules as prescribed by the defence authorities in their rules.”* Moreover, the said amendment pertains to G.O.Ms.No.168 dated 07.04.2012 and G.O.Ms.No.245 dated 30.06.2012 and whereas the mandatory requirement of obtaining Security Clearance from

Military Authority is contained in G.O.Ms.No.86 dated 03.03.2006 and G.O.Ms.No.249 dated 16.03.2009.

6. Heard learned counsel for the parties.

7. It is important to note that the G.O.Ms.No.86 dated 03.03.2006 and G.O.Ms.No.249 dated 16.03.2009 have been superseded by G.O.Ms.No.168 dated 07.04.2012, consequently relaxing the restriction on the building activity in the vicinity of certain areas i.e., defence establishments in case of sites within 500 meters distance from the boundary of defence areas/military establishments. Whereas by G.O.Ms.No.7 dated 05.01.2016, the G.O.Ms.No.168 dated 07.04.2012 and G.O.Ms.No.245, dated 30.06.2012, were amended and the substituted Rule 3, sub rule (b) and (f) of Amendment No.4 states that *“In case of sites abutting to Defence establishments, NOC from Defence authorities need not be insisted. However it will be the responsibility of the applicants to follow the applicable rules as prescribed by the Defence authorities in their rules”*.

8. In Guidelines dated 18.05.2011 issued by the Ministry of Defence, Government of India, regarding No Objection Certificate (NOC) for building construction, it is stated in Clause (b) as under:

“(b) Where the local municipal laws do not so require, yet the Station Commander feels that any construction coming up within 100 meter (for multi-storey building of more than four storeys the distance shall be 500 meters) radius of defence establishment can be a security hazard, it should refer the matter immediately to its next higher authority in the chain of its command. In case the next higher authority is also so convinced, then the Station Commander may convey its objection/views to the local municipality or State Government agencies. In case the municipal authority/State

Government do not take cognizance of the said objection, then the matter may be taken up with higher authorities, if need be through AHQ/MoD.”

9. It is not in dispute that the petitioners have already obtained building construction permission from the concerned Grampanchayat on 09.01.2016. Moreover, the respondents have not stated anywhere in their counter-affidavit that construction of building in the aforesaid plots would become a security hazard and, therefore, construction cannot be permitted. Similar issue came up before this Court in W.P.No.16002 of 2016 wherein this Court, vide order dated 05.05.2016, while granting interim stay, directed the respondents 3 to 5 therein not to interfere with the construction of residential flats for six weeks. The said order was neither challenged nor altered by the higher Court. Since as per the Amendment No.4 as mentioned above, NOC need not be insisted if construction made within 100 meters to 500 meters subject to the type of construction being made by the parties.

10. In view of the above, I hereby direct the respondents not to interfere with the construction of the petitioners.

11. The writ petitions are, accordingly, allowed. No costs. Pending miscellaneous petitions, if any, shall stand closed.

SURESH KUMAR KAIT, J

21st September, 2016
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