

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1927 OF 2013**

1) Hedavkar Mechanical Works LLP
a Limited Liability Partnership having
its registered office at 101, Kalpatary
Synergy, Opp. Grand Hyatt Santacruz
(East), Mumbai- 400 055.

2)Imtiyaz Kanga
Director of Petitioner No.1
having its office at 101, Kalpataru
Synergy, Opp. Grad Hyatt, Santacruz
(East), Mumbai- 400 055.

...Petitioners.

Versus

1)The State of Maharashtra
through its Principal Secretary
Urban Development Department
Mantralaya, Mumbai 400 032.

2) Municipal Corporation of Greater
Mumbai Mahapalika Marg, Mumbai
400 001.

3) The Commandant,
Central Ordnance Depot,
Akurli Cross Road No.3,
Kandivali (East), Mumbai 400 101.

4) Union of India, Through the
Secretary, Ministry of Defence,
South Block, New Delhi- 110 001.

...Respondents

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Mr. Nivit Shrivastava a/w. Mr. Harsh Behany i/by. Maniar Srivastava
Associates for the Petitioners.

Mr. M.A. Sayed AGP for the R. No.1.

Mrs. K.H. Mastakar- BMC for the R.No.2.

Mr. S.R. Rajguru a/w A.D.Y. Yadav for UOI for the R. Nos.3 and 4.

**CORAM: RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 17th FEBRUARY, 2017.

P.C.:-

Rule. By consent of the parties rule is made returnable forthwith.

2. The Petitioners, by this Petition filed under Article 226 of the Constitution of India, have sought directions to the Respondent No.2 to withdraw demand made vide letter dated 14th August, 2012 to obtain no objection certificate (for short 'NOC') from the Respondent No.3 as a pre condition for further approvals and sanctions of the amended plans and issuance of occupation certificate in respect of the construction of the commercial building proposed to be constructed by the Petitioners. The Petitioners have also challenged the legality and validity of the letters /directions dated 4th November, 2010 issued by the Urban Development Department of the Respondent No.1 and the impugned letter dated 18th May, 2011 issued by the Respondent No.4. In the alternative the Petitioners have sought directions against the Respondent No.3 to issue the necessary NOC for permitting the

Petitioner No.1 to construct and complete the proposed commercial building as per the sanction/amended plan.

3. The Petitioner No.1 is a private limited company engaged in construction and development of township and layouts for residential and commercial purposes. The Petitioner was in the process of constructing a commercial building in plot bearing No.CTS 132A/1A subsequently renumbered as CTS Nos.132A/1A, 134C, 135A and 136 (hereinafter referred to as 'the said Plot'). The Respondent No.2 had sanctioned the layout/sub division of the said Plot. The Petitioner No.1 through its Architect submitted the plans of the proposed construction alongwith the required documents for the approval of the Respondent No.2. Subsequently, the Petitioner No.1 also applied for grant of commencement certificate. The Respondent No.2 issued commencement certificate to commence construction of the said proposed building on the said Plot on the terms mentioned therein. The commencement certificate was restricted upto the top stilt slab from 14.24 mts from front face of the building towards north direction. The commencement certificate was revalidated and extended as per the plans sanctioned /amended from time to time.

4. On 10th June, 2010, the Petitioner No.1, through its Architect informed the Respondent No.2 that the construction of the proposed commercial building was completed till the plinth level and requested to grant commencement certificate for full work of the building. The Respondent No.2 granted no objection certificate for construction of the said proposed building as per the amended sanctioned plan on the terms and conditions contained therein.

5. On 6th August, 2012, the Petitioner requested the Respondent No.2 to sanction the amended plans for the construction of the said proposed commercial building so as to permit the utilisation of fungible FSI as per the new modifications to the Development Control Regulation, 1991. By the impugned letter dated 14th August, 2012, the Respondent No.2 informed the Petitioner No.1 that the request for sanction of amended plans would be further proposed /considered only after the Petitioner submits a NOC from the Respondent No.3. The Petitioners were informed that such NOC was required in the light of the letter issued by the Section Officer of the Respondent No.1 under No.CRZ-2010/2634/ Case No.421/10/Sec.(2)/New-12 dated 4th November, 2010.

6. The learned counsel appearing for the Petitioners have submitted that the conditions imposed by the Respondent No.1 vide letter dated 4th November, 2010 as well as the guidelines laid down by the Respondent No.1 in the letter dated 18th May, 2011 are arbitrary. He has further submitted that the Respondent No.2 had earlier sanctioned the plans without imposing any such condition as spelt out in the impugned letter dated 14th August, 2012. He has stated that the Respondent No.2 could not have abdicated its statutory duties solely on the basis of such letters/guidelines issued by the Respondent Nos.1 and 4.

7. Mr. Rajguru, the learned counsel for the Respondent Nos.3 and 4 has submitted that construction in close proximity to the Defence establishment can pose a security threat. The Defence Authorities of Central Ordnance Depot (COD) therefore, entered into a correspondence with the Government of Maharashtra and Municipal Corporation of Greater Mumbai for not permitting the constructions of high rise buildings which may result into security risk. The learned counsel for the Respondent No.4 has submitted that the Petitioner and their Architect had not drawn attention of the Municipal Authority to the circular dated 4th November, 2010 and the guidelines dated 18th

May, 2011 of the Defence Ministry. The learned counsel for the Respondent No.4 has further submitted that the Respondent No.1 has cancelled the directions dated 4th November, 2010 and issued fresh circular/directions dated 21st February, 2015 to the Planning Authorities. It is submitted that proviso to clause 1B of the guidelines dated 18th May, 2011 is applicable prospectively, hence the same would not be applicable to the Petitioners application which was filed prior to coming into force of the said guidelines.

8. We have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

9. It is not in dispute that the Petitioners have commenced construction of a commercial building in the said Plot, as per the plans approved and sanctioned by the Respondent No.2. The Petitioners had completed the constructions till the plinth level and had sought grant of commencement certificate for full work of the building. The Respondent No.2 had granted NOC to carry out the work as per the amended plans submitted vide letter dated 18th June, 2010. By letter dated 6th August, 2012 the Petitioners, through its Architect submitted

amended plans for approval by consuming fungible FSI in view of modification in DCR. In response to the said letter the Respondent No.2 for the first time informed the Petitioner No.1 through its Architect that its request for sanction of amended plans would be further processed/considered only after submitting the NOC from the Respondent No.3. The Respondent No.2 had made it clear that the demand for NOC from the Respondent No.3 was made in view of the letter dated 4th November, 2010 issued by the Section Officer of the Respondent No.1.

10. It is pertinent to note that by letter dated 4th November, 2010 the Section Officer of the Urban Development Department of the Respondent No.1 had interalia instructed the Municipal Commissioner of the Municipal Corporation of Greater Mumbai to obtain NOC from the Defence establishment before granting development permission in the land near or adjoining the Defence establishment.

11. It is to be noted that the Ministry of Defence, Government of India had also issued guidelines vide circular dated 18.5.2011 in respect of NOC relating to constructions around the establishment of Defence Department. These guidelines were further modified vide

circulars dated 18.3.2015 and 17.11.2015. The Respondent No.1 by circular dated 21.5.2015, withdrew /cancelled the letter dated 4.11.2010 and issued instructions to the Planning Authorities including the Respondent No.2 relating to the constructions near or adjoining the Defence establishment. These instructions were in consonance with the guidelines dated 18.5.2011 issued by the Ministry of Defence, Government of India.

12. As stated earlier, the Respondent No.2 had demanded the NOC vide its letter dated 14th August, 2012 in view of the letter dated 4th November, 2010. The said letter has been cancelled /withdrawn vide letter dated 21.5.2015. In view of this fact, it is not necessary to decide the legality or validity of the letters dated 4.11.2010 and 14.8.2012. Furthermore, withdrawal of letter dated 4.11.2010 also obviates the requirement of the NOC as demanded by the impugned letter dated 14th August, 2012.

13. It is to be noted that during the pendency of this Petition the Ministry of Defence amended the guidelines issued vide circular dated 18th May, 2011 read with circulars dated 18th March, 2015 and 17th November, 2015. These guidelines read as under:-

“2. 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 amendments to the Works of Defence Act, 1903, the Government has decided to amend guidelines issued under Circular dated 18.05.2011 read with Circulars dated 18.03.2015 and 17.11.2015, in consultation with Services, in the following manner:-

a) Security restrictions in respect of Defence establishments/ installations located at 193 stations as listed in Part A of Annexure to this circular shall apply upto 10 meters from the outer wall of such Defence establishments /installation 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 establishments.

b) Security restrictions in respect of Defence establishments/installations located at 149 stations as listed in Part B of Annexure to this circular shall apply upto 100 meters from the outer wall of such Defence establishments/installations to maintain clear line of sight for effective surveillance. Any construction or repair activity shall not be

permitted within 50 meters. Further, a height restriction of 03 meters (one Storey) shall be applicable for the distance from 50 meters to 100 meters. Any construction or repair activity within such restricted zone between 50 to 100 meters will require prior No Objection Certificate (NoC) from the Local Military Authority (LMA)/Defence establishments.

3. It is further provided that where local municipal laws require consultation or approval or NoC from the LMA/Station Commander before a building plan is approved, compliance to such statutory requirement shall continue to be applicable.
4. The procedure for issuance of NOC shall be the same as contained in Circular dated 18.05.2011.”

14. It is thus clear that the guidelines issued vide circular dated 18.5.2011, 18.3.2015 and 17.11.2015 have been amended. It is therefore not necessary to go into the legality of the said guidelines. Suffice it to say that the development /construction work adjoining or near the Defence establishment will now be governed by the guidelines laid down vide circular dated 21st October, 2016 and the development /construction proposals will have to be processed in

accordance with the aforesaid guidelines. In the light of above as a corollary thereof the proposal of the Petitioners in respect of the construction of the commercial building of the said plot has to be processed in the light of the guidelines laid down by the Ministry of Defence vide circular dated 21st October, 2016.

15. Under the circumstances, the Petition is allowed in terms of prayer clause (a).

16. The Respondent No.2 is directed to take appropriate decision as regards the requirement of NOC from the defence establishment and to process the proposal of the Petitioners in respect of the construction of commercial building in the said Plot, in the light of the circular dated 21st October, 2016 issued by the Ministry of Defence, Government of India.

17. The writ petition is disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)