

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 15070 OF 2017

- 1 Pralhad s/o Gangaram Banswal,
Age : 79 years, Occupation : Pensioner,
R/o Padampura, Mochi Mohalla,
Aurangabad.
- 2 Kantilal s/o Brijlal Banswal,
Age : 52 years, Occupation : Agriculture,
R/o House No.5-11-18, Padampura,
Aurangabad.

...PETITIONERS
(Original Plaintiffs)

-VERSUS-

- 1 Defence Estate Officer,
Pune Circle, Pune.
- 2 Defence Department,
Union of India.
Through it's Secretary, New Delhi.
- 3 Colonel,
Administrative Commandant,
For Station Commandant, Cantonment,
Aurangabad.

...RESPONDENTS
(Original Defendants)

...
Advocate for the Petitioners : Shri R.N.Dhorde, Senior Advocate a/w Shri
Dhorde Vikram R.

Assistant Solicitor General of India for the Respondents : Shri Deshpande
Sanjeev B...

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th August, 2018

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioners/ original Plaintiffs are aggrieved by the order dated 10.04.2015 passed by the Trial Court rejecting the application Exhibit-5 seeking temporary injunction in RCS No.224/2015. They are also aggrieved by the judgment of the Appellate Court dated 25.09.2017 by which, Miscellaneous Civil Appeal No.86/2015 has been dismissed.

3 I have considered the submissions of the learned Senior Advocate appearing on behalf of the Petitioners and the learned Assistant Solicitor General of India (ASGI) appearing on behalf of the Respondents.

4 Considering the controversy involved, I am not required to advert to their entire submissions keeping in view that RCS No.224/2015 is still pending adjudication.

5 This Court (Coram : V.K.Jadhav, J.) had heard the litigating sides and had passed the order dated 03.05.2018 as under :-

- "1. *Heard learned counsel for the petitioners and learned Assistant Solicitor General for respondents.*
2. *On perusal of the documents annexed with this writ petition, it appears that the office of District Superintendent of Land Records, Aurangabad has measured the land and in accordance with the said*

measurement, the said authority has also prepared a map. The said map is produced alongwith this writ petition at Exhibit "A" page 17. It appears from the said map that the distance between the proposed construction and the boundary line of Defence land is not specifically mentioned. It also appears that there is one another strip of land in between proposed constructions and the boundary of the Defence land. So far as the other documents seeking lay out permission for development of the land Gat No. 69 (p) situated at Tisgaon, Tq, and District Aurangabad is concerned, on perusal of the said document, including the map at page 116, I do not find that the distance between the boundary of the Defence land and the proposed construction has been mentioned specifically.

3. *In view of above, by consent of both the parties, the District Superintendent of Land Record or any other officer appointed on behalf of the said authority in this regard is hereby appointed as Court Commissioner to measure the distance between the boundary of Defence land and the proposed construction and also to measure the distance between the boundary of the Defence land and another strip of the land situated in between proposed construction and the boundaries of Defence land specifically alongwith the map, if required. The petitioner is ready to bear the expenses of the Commissioner. Inform the District Superintendent of Land Records, Aurangabad accordingly. Stand over to 20.06.2018."*

6 Pursuant to the above stated order, the Court Commissioner, who was the District Superintendent of Land Records, has submitted the map and his report before this Court. The same is taken on record and marked as Exhibit "X" collectively for identification.

7 The said report and the map indicate that on the north-east

side of the suit land, the distance between the suit land and the military area is 33 meters and on the south-east side, it is 25 meters. Obviously, the suit land is beyond the 10 meters distance from the defence land. There is no dispute amongst the litigating sides with regard to Exhibit X, which is the report and map.

8 In the above backdrop, I have perused the circular dated 21.10.2016 issued by the Deputy Director (Lands), Government of India, Ministry of Defence addressed to the three Chiefs of Army staff, Air Force and Naval staff, wherein, the Ministry of Defence has relaxed earlier norms of 100 meters distance between the private land and the defence land to a distance of 10 meters.

9 The said circular dated 21.10.2016, at Exhibit G to the petition, reads as under :-

"Subject : Guidelines for issue of 'No Objection Certificate (NOC) for building constructions' - regarding.

Reference Circular of even number dated 18.05.2011 read with amendments issued vide Circulars of even number dated 18.03.2015 and 17.11.2015 regarding grant of No Objection Certificate (NOC) from the Local Military Authorities (LMA) for construction of buildings in the vicinity of defence establishments.

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 / 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 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 requirements shall continue to be applicable.*
- 4. The procedure for issuance of NOC shall be the same as contained in Circular dated 18.05.2011."*

10 It is, therefore, obvious that mandatory distance for permitting development on the private property adjacent to the defence

land, should be at least 10 meters. Within the said 10 meters, private persons are required to seek No Objection Certificate (NOC) from the local military authority of the defence establishment.

11 The learned Senior Advocate has strenuously contended that if the suit land or the private land of an individual is more than 10 meters away, a NOC would not be required.

12 I do not wish to go into this aspect since the suit is pending and I was not called upon to adjudicate as to whether, a NOC is to be taken or not. Suffice it to say, in the present case, the suit land is at the distance of 33 meters at one end and 25 meters at the other end, from the defence land. By the impugned orders, it is left to the defence authorities to decide as to how they wish to deal with the contentions of the Petitioners/ Plaintiffs. Prima facie, the Trial Court and the Appellate Court appear to have abdicated their authority and rather than going into the matter to ensure that the ends of justice are met, have left it to the defence authorities and have declined to exercise their jurisdiction. I find the impugned orders to be not worthy of appreciation.

13 The affidavit in rejoinder filed by the Petitioners places on record the communication issued by the Defence Estates Officer, Pune Circle (Dr.D.N.Yadav) dated 27.01.2017 addressed to the Station Cell, Aurangabad. It pertains to the pending suit and the grievances of the Plaintiffs. The observations of Dr.D.N.Yadav in the said letter read as

under :-

- "2. *In this connection, it is intimated that on careful perusal of the application dated 21.11.2016 referred to above, it revealed that the applicants have requested to accord no objection to carry out the development of the land owned by the applicant situated at Gut No.69 of village Tisgaon, Tal. and District. Aurangabad.*
3. *Further, the applicant in past after obstructing him for aforesaid development by your HQs have filed RCS No.224/2015 in the District Court, Aurangabad wherein this office and your HQs are the defending parties, the case is still subjudice. The main submission of this office and your HQs before Hon'ble District Judge in aforesaid RCS No.224/2015 is that the proposed development is within the 100 mtrs restriction as per Works of Defence Act 1903 and GOI, MOD letter No.11026/2/2011/D (Lands) dated 18.05.2011.*
4. *However, the GoI, MoD vide Circular No.11026/2/2011/ D(Lands) dated 21.10.2016 (copy enclosed) revised the guidelines dated 18.05.2011 stating that for Aurangabad station along with 192 other stations, the prior NOC from LMA/ Defence establishment will be required for construction or repair activity within restricted zone of 10 mtrs from the outer wall of such Defence Establishments/ Installations.*
5. *The applicants vide their letter referred to above dated 21.11.2016 contended that their development work on land owned by the applicants situated at Gut No.69 of village Tisgaon, Tal. & Dist.Aurangabad is beyond the aforesaid 10 mtrs restriction and requested to issue clarification in this regards. Further the applicant stated that if such clarification is received they will withdraw the suit bearing RCS No.224/2015 filed by them against us. This office is of the view that the correct and valid clarification in this regard is issued to applicants, they will withdraw the aforesaid suit thereby, the valuable time of this office and your HQs as well as the cost for defending*

the aforesaid suit will be saved. This will eventually save the funds of the Government.

6. *In view of the above, it is requested to take necessary action as per circular of GoI, MoD issued under letter No.11026/2/2011/D (Lands) dated 21.10.2016 at your end in the interest of the state."*

14 It is, therefore, obvious that the defence authorities accept the situation that the suit land Gut No.69 of village Tisgaon is beyond the 10 meters restriction. It is noted in paragraph 5 that if the suit land is beyond the restricted area, a clarification by the local military authority would clear the cloud of doubts and would also lead to the disposal of the pending suit as the Plaintiffs have expressed their desire not to proceed with the suit when the land is situated beyond the restricted area.

15 The learned Senior Advocate makes a statement, on instructions from the Advocate on record, that if the suit land is now proved to be beyond the restricted 10 meters distance and if a NOC is issued by the local military authorities, the Petitioners have no hesitation in withdrawing the suit.

16 The learned ASGI has drawn my attention to the affidavit in reply and the documents tendered on record. He has perused the report and the map Exhibit X collectively and submits that the documents presently before the Court do indicate that the suit land is beyond the 10 meters restricted area. He, however, submits that as the suit is pending, the said issue can be gone into by the Civil Court.

17 Notwithstanding the submissions of the learned ASGI, the documents available on record, especially the report of the Court Commissioner, would indicate that the land is apparently beyond the restricted area. It also needs to be appreciated that the statement made by the Plaintiffs that in the above backdrop, a NOC can be issued by the local military authorities and the suit itself can be disposed of.

18 Considering the above, this Writ Petition is partly allowed. The impugned orders dated 10.04.2015 and 25.09.2017 are quashed and set aside. Exhibit-5 in RCS No.224/2015 stands partly allowed in the above terms.

19 In the event, the local military authorities/ Respondents herein issue an NOC as is permissible under the circular dated 21.10.2016 r/w Exhibit X and the communication dated 27.01.2017, within a period of four weeks from today by depositing the same before the Trial Court, the Trial Court would proceed to dispose of the suit at that stage itself in view of the statement of the Plaintiffs recorded in this order.

20 Rule is made partly absolute in the above terms.