

\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1067/2017**

SANJAY NARANG

..... Petitioner

Through: Mr Rohan Thawani,
Mr Anand Daga, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Gaurang Kanth, CGSC with
Mr Pawan Kumar, Liasoning Officer, DGDE.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

28.08.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that an order be issued directing the respondents to include Landour Cantonment, Mussoorie, Uttarakhand in Annexure-A to “*Guidelines for issue of no Objection Certificate (NOC) for building constructions*” dated 21.10.2016 (hereafter ‘the Circular’).

2. The petitioner claims to be an owner of a property known as Dahlia Bank, Survey No. 157, Landour Cantonment, Mussoorie, Uttarakhand (hereafter ‘the property’), which is situated in the vicinity of Institute of Technology Management (hereafter ‘ITM’). The said institute was established in the year 1962 and is operated by the Defence Research and Development Organization (DRDO). Concededly, ITM is classified as a

defence establishment.

3. By a notification dated 30.08.2005 issued in exercise of powers conferred under Section 3 of the Works of Defence Act, 1903 (hereafter 'the Act'), the Central Government had imposed certain restrictions as specified in Clause (c) of Section 7 of the Act, on the use and on enjoyment of the land lying within the distance of 50 metres from the crest of the outer parapet of the boundary of ITM. The implication of the aforesaid notification is that no variation in the ground level, no building, wall, bank or other construction can be erected, added or altered except with the written approval of the General Officer Commanding of the District. Thus, the petitioner is proscribed from excavation or raising any construction on the property in question (Dahlia Bank) as the same is located within the distance of 50 metres from the boundary wall of ITM.

4. In terms of the Circular issued by the Ministry of Defence on 21.10.2016, it has been specified that security restrictions in respect of defence establishments/installations listed in Part-A of the Annexure to the Circular would apply only upto ten metres from the outer wall of such defence establishments/installations. The Circular also specifies that security restrictions in respect of defence establishments/installations listed in Part-B of the Annexure to the Circular would apply upto hundred metres from the outer wall of such defence establishments/installations.

5. Whereas Part-B of the Annexure to the Circular lists out 149 establishments/installations located in the State of Jammu and Kashmir; Part-A of the said Annexure includes 193 installations that are located in other parts of the country. Landour Cantonment is not included amongst

the 193 defence establishments/installations listed in Part-A of the Annexure to the Circular dated 21.10.2016.

6. It is in the aforesaid context that the petitioner has filed the present petition seeking a direction that Landour Cantonment be also included as one of the defence establishments/installations in Part-A of the Annexure to the Circular.

7. The petitioner claims that exclusion of Landour Cantonment from Part-A of the Annexure to the circular is arbitrary and unreasonable and thus, violates Article 14 of the Constitution of India. Mr Rohan Thawani, learned counsel appearing for the petitioner earnestly contended that ITM is an educational institution and restricting any construction within an area of 50 metres outside its boundary wall is unnecessary. He submitted that a perusal of Part-A of the Annexure to the Circular dated 21.10.2016 clearly indicates that restrictions on construction outside the boundary walls of several sensitive defence establishments was limited only to the area extending up to 10 metres beyond their boundary walls. He submitted that in the circumstances there would be no plausible reason for the respondent to have excluded Landour Cantonment from Part-A of the Annexure to the Circular.

8. Mr Gaurang Kanth, learned counsel appearing for the respondents submitted that restrictions on construction and other activity in the vicinity of defence establishment has been imposed towards safety and security of the installations and the reasons for the same cannot be disclosed in public. He referred to the counter affidavit filed on behalf of the respondents, wherein it was affirmed that the restrictions had been

imposed after consultations with the Defence Services. He also contended that the Circular modified an earlier Circular dated 18.05.2011, which did not apply to constructions regulated under the provisions of specified enactments including the Act.

9. Mr Gaurang Kanth, leaned counsel appearing for the respondents contended that in view of the notification dated 30.08.2005, the restrictions as imposed under the Act were applicable. He further emphasized that the guidelines dated 18.05.2011 as specifically modified by the Circular dated 21.10.2016 are not applicable to Landour Cantonment.

Discussions and Conclusions

10. Undisputedly, by a notification dated 30.08.2005 issued by the Ministry of Defence, restrictions as specified in Clause 7(c) of the Act (Works of Defence Act, 1903) were imposed on use and enjoyment of the land described in the Schedule to the said notification, which reads as under:-

“All the land comprised in the area lying within a distance of approximately fifty meters from the crest of the outer parapet of the Institute of Technology Management (ITM), Landour Cantonment, Mussoorie, in the State of Uttaranchal – 248 179.”

11. Subsequently, by a letter dated 25.08.2008 owners of several properties including the property in question (Dahlia Bank, Sister Bazaar, Landour Cantonment) were informed that ITM was declared as a notified area under Section 3 of the Act and restrictions had been imposed in respect of use and enjoyment of the land lying in the vicinity of the ITM.

The relevant extract of the said communication reads as under:-

“Keeping in view of the deteriorating security environment in the country, as well as increasing global terrorism, the Govt. of India vide Gazette of India notification dated Sep 11 -17 2005 under SRO 106 dated August 2005, has declared Institute of Technology Management (ITM), Landour Cantt., MUSSOORIE as NOTIFIED AREA, under section 3 of Works of Defence Act 1903 and imposed restrictions specified in clause (C) of Section 7 of the said Act, upon the use and enjoyment of land lying in the vicinity of INSTITUTE OF TECHNOLOGY MANAGEMENT (ITM), Landour Cantt., Mussoorie - 248 179 in the date of Uttarakhand, in order that the said land may be kept free from buildings and other obstruction from the date of publication of this Notification in the Official Gazette.

2. As per Gazette of India notification dated Sept 11-17 2005 SRO 106 dated 30 Aug 2005, all the land comprised in the area lying within a distance of approximately Fifty meters (50 meters) from the crest of the outer parapet of the Institute of Technology Management (ITM), Landour Cantonment, Mussoorie in the State of Uttarakhand - 248 179 may be kept free from buildings and other obstructions. A sketch plan and copy of Gazette of India notification is enclosed herewith for your kind information.

3. For any kind of construction/renovation by the occupants of the building lying within the distance of approximately fifty meters from the crest of the outer parapet of the ITM are required to obtain a NOC for this purpose. NOC for construction/renovation within the notified area is issued by ITM Mussoorie only after getting approval from the DRDO HQrs.

4. You are requested to take appropriate note of this Notification and ensure to obtain NOC from this office before any construction/renovation work is undertaken at your land.”

12. It is relevant to note that the notification dated 30.08.2005 has been challenged by the petitioner by way of a writ petition filed in the High Court of Uttarakhand. The said notification is not a subject matter of challenge in this petition. Thus, concededly, in terms of the notification dated 30.08.2005, no construction activity can be carried out within an area of 50 meters from the boundary wall of ITM without the necessary permission of the General Officer Commanding.

13. The respondents also dispute that the petitioner has any title to the property referred to as Dahlia Bank. According to the respondents, Dahlia Bank is one of the Old Grant properties where underlying land is owned by the Government of India. They claim private individuals cannot occupy the same without obtaining permission of the Ministry of Defence. It is further stated that neither the petitioner nor the person from whom the petitioner is stated to have purchased the property in question was granted any permission to occupy the property and, therefore, the petitioner is an illegal occupant of the premises in question. However, given the limited scope of controversy in this petition, it is not necessary for this Court to address this controversy.

14. The examination in the present petition is limited to whether non-inclusion of Landour Cantonment in Part-A of the Annexure to the

Circular offends Article 14 of the Constitution of India.

15. In terms of the Notification dated 30.08.2005, restrictions on the use and enjoyment of the land in the vicinity of ITM have been imposed in the interest of security. As noticed above, the same is not a subject matter of challenge before this Court. Thus, this petition must be decided on the basis that restrictions as imposed in terms of the Act are valid and for good reasons.

16. At this stage, it would be relevant to refer to Section 3(1) of the Act, which reads as under:-

“Whenever it appears to the Central Government that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders.”

17. It is apparent from the above that restriction on use and enjoyment of any land can be imposed where it appears to the Central Government that it is necessary to impose such restrictions. Thus, once the validity of the notification dated 30.08.2005 is accepted, it would obviously follow that imposition of such restrictions are considered necessary in the interest of safety and security. Thus, the question whether any relaxation is warranted must also yield to the opinion of the Central Government.

18. In the present case, it has been affirmed that the Circular was issued after discussion with the Defence Services. Thus, the Central Government has not considered it appropriate to relax the restrictions imposed in

respect of Landour Cantonment keeping in view the requirement of safety and security of the installation in question.

19. The question whether any relaxation as to the restrictions are warranted would entail consideration of various factors including the sensitivity of the establishment; risk perception; the topography of the land etc. Plainly, the opinion of Central Government in this regard is not be amenable to judicial review under Article 226 of the Constitution of India.

20. In ***Zamora : (1916) 2 AC 77 (PC)***, the Privy Council had observed as under:-

“...Those who are responsible for the national security must be the sole Judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public.”

The Supreme Court has quoted the above passage in several decisions.

21. In ***Ex-Army men's Protection Services (P) Ltd. v. Union Of India and Ors. : 2014 5 SCC 409***, the Supreme Court considered the question whether any exception to the principles of natural justice is permissible in the interest of national security. In this context, the Court observed as under:-

“16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in *Secy. Of State for Home Deptt. v. Rehman : (2003) 1 AC 153*

“.... in the matter of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive.”

22. In the present case, the Central Government has not relaxed the restrictions on account of security concerns. It would not be apposite for this Court to evaluate the extent of security concerns and whether the same warrants any relaxation. This decision rests solely on the Central Government.

23. The petition is, accordingly dismissed.

AUGUST 28, 2018

pkv

VIBHU BAKHRU, J