

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: January 11, 2019

+ W.P.(C) 6901/2017, CM No. 28665/2017
UOI

..... Petitioner

Through: Mr. R. Balasubramanian, Adv. and Mr.
Santosh Kumar, Adv.

versus

GNCT OF DELHI AND ORS

..... Respondents

Through: Mr. Ajjay Aroraa, Adv. for NDMC
Mr. Arvind K. Nigam, Sr. Adv. with
Mr. Ajay Kumar, Adv. and Mr. Mikhil
Sharda, Adv. for R4

AND

+ W.P.(C) 9883/2017, CM Nos. 40283/2017
NARYAN DUTT SHRIMALI FOUNDATION INTERNATIONAL
CHARITABLE TRUST SOCIETY

..... Petitioner

Through: Mr. Arvind K. Nigam, Sr. Adv. with
Mr. Ajay Kumar, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Jasmeet Singh, CGSC for UOI
Mr. Shlok Chandra, Adv. for DDA
Mr. Rakesh Mittal, Standing
Counsel with Mr. Maklesh
Anand and Ms Yamini Mittal,
Advs. for R2/NDMC

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. As these two writ petitions involve identical issues with regard to the construction made on the same plot, they are being decided by this common order. The facts of each of the writ petitions are being narrated separately, and the parties shall be referred to by their names.

Facts in W.P.(C) 6901/2017:-

2. This petition has been filed by the UOI (Commandant Ordnance Depot) ("Commandant" in short) with the following prayers:-

"It is therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to:-

(a) Issue a writ of certiorari and or such other writ, order or direction calling upon Respondents 1 to 3 to produce the complete record leading to the issuance of sanction accorded to the Respondent no.4 for construction of building to house a hospital at Site No.2, Zone H-4/5, Facility Center, Pitampura, Delhi-110034;

(b) Issue a writ of certiorari and or such other writ, order or direction quashing sanction accorded to the Respondent No.4 for construction of a high rise building to house a hospital at Site No.2, Zone H-4/5, Facility Center, Pitampura, Delhi-110034;

(c) Issue a writ of mandamus and or such other writ, order or direction calling upon Respondents 1 to 3 to restrain permanently Respondent No.4 for construction of high rise building to house a hospital at Site No.2, Zone H-4/5, Facility Center, Pitampura, Delhi-110034;

(d) Issue any other Writ/direction as this Hon'ble Court may deem fit in the facts and circumstances of the case."

3. It is their case, NDSF (writ petitioner in W.P.(C) 9883/2017) approached the Station Commander, Delhi Cantt. seeking NOC as regards height of the proposed hospital vide letter dated September 05, 2016. In the said letter, NDSF clearly stated that the location of the hospital is falling across the 500 meters green belt and 45 meters wide road i.e. road No.45, opposite the Ordnance Depot and sought permission of the Local Military Authority for construction of a building with a height of 70 meters. It was averred that NDSF had stated that building plans were sanctioned by the Nr. DMC and the construction is going as per the sanctioned plans but it has submitted revised building plans for approval.

4. It is the case of the Commandant that Indian Army has a vital establishment known as Ordnance Depot, Shakurbasti, located in A-1-Defence Land in an area approximately 367.7

acres of land. Presently the Depot has huge inventory of all types of war like stores supplied to approximately 700 field formations / units of the Indian Army as well as units proceeding on duty abroad on UN missions.

5. It is the case of the Commandant that Dr. Narayan Dutt Shrimali Foundation (NDSF) is carrying out construction of a charitable hospital complex at site No.2, Zone H-4/5, Facility Centre, Pitampura contrary to the Rules and Regulations, with sanction accorded by the respondent Nos.1 to 3 (NCTD/Nr.DMC). The site is north of the Ordnance Depot (across road No.43) on a land allotted to the Trust by the Delhi Development Authority. The inter-se distance between the boundary of the Ordnance Depot and the building that is coming up as a hospital is approximately 50 meters. It is the case of the Commandant that sanction was accorded by Nr. DMC in the year 2013 for construction of building, but no information was given, to the Military authorities.

6. The Commandant took up the matter with various local Authorities of NCTD / Nr. DMC and also Chairman, NDMC vide letters dated December 10, 2016 and January 06, 2017 and expressed security reservations about the proposed hospital

coming up with a height of 70 meters in close vicinity of Ordnance Depot, Shakur Basti which will be serious security concern, and because of which NOC could not be given.

7. It is the case of the Commandant, by letter dated January 13, 2017, Nr. DMC wrote to the Station Commander, Delhi Cantt. intimating that the NDSF wrote a letter dated December 29, 2016 to it stating that as per new guidelines for NOC, issued by Ministry of Defence, Govt. of India dated October 21, 2016, any construction or repair activity within restricted area of 10 meters would require NOC from local Military Authority and since the hospital site is 100 meters away from the Depot boundary wall and main approach road is 45 meters in front of project boundary wall, no NOC is required. Nr. DMC also informed the Station Commander that while NDSF has sought NOC for 70 meters height, the building sanctioned plans were only for 45 meters as per record. NDSF again approached HQ, Delhi Area (Lands Branch) vide letter dated February 01, 2017 and requested for issue of NOC in favour of Nr.DMC.

8. It is the case of the Commandant that from letter dated September 27, 2016 issued by Nr. DMC, it transpired that in fact only Delhi Urban Arts Council (DAUC in short) had approved

the building plan of NDSF vide letter dated September 07, 2016, whereas NOC from other local civil authorities like DFS, Defence Establishment, AAI, DMA/NMA, DJB, NDPL was still awaited. It was further stated by Nr. DMC that complete compliance of I/N dated October 19, 2015, November 10, 2015 and reminders sent on various dates to NDSF had not been done so far. It was also stated by Nr. DMC that UBBL-2016 has come into force in Delhi and therefore the building plan should be modified as per UBBL-2016 and in case proposal is changed from earlier proposal prepared as per BBL-1983, revised proposal, if any, had to be approved by external agencies.

9. That in the meantime, the local military authority convened a Board of Officers and vide order dated February 07, 2017 they came to the conclusion that the high rise building, if allowed to be constructed, will pose a security threat to the Depot. The proceedings were submitted to the GOC, Delhi Area who directed, vide directions dated March 28, 2017, that in view of security implications NOC cannot be given. It is their case that the construction of the building is still going on without approval of various agencies of NCTD/ Nr. DMC as required under law and further construction will pose a serious threat to

the safety and security of the Ordnance Depot, Shakur Basti.

10. Counter affidavit has been filed by Nr. DMC wherein it is stated that initially, in the year 2013, the building plans for construction of Ayurvedic Hospital were sanctioned / released after obtaining comments from T.P. Deptt. & Health Deptt., Nr. DMC, as well as obtaining NOCs from various Deptts. like DFS, DUAC, AAI etc. The Building Plans were processed and sanctioned in accordance with BBL-1983/MPD-2021. It is their case that during the meeting held on March 08, 2016 in the MoUD, Govt. of India on “Ease of Doing Business”, the matter relating to providing details and maps of areas where restrictions have been imposed under the Works of Defence Act and other Acts to Local Municipal Authorities was raised. The guidelines for issuance of NOC for building constructions, issued by Ministry of Defence vide letter dated May 18, 2011 were received by respondent / North DMC as Annexure to letter of Col. Yogesh Dungrakoti, dated March 14, 2016, alongwith the maps demarcating area of 100/500 mtrs around Defence areas including map of OD Shakur Basti. Vide this letter dated March 14, 2016, it was informed, for the first time, that the clause as provided in the above mentioned letter and provided in the Work

of Defence Act 1903 are to be borne in mind, while giving clearance for construction of any kind in vicinity of Defence land and further that intimation be given to the Local Military Authority to obtain NOC. These guidelines/instructions of Ministry of Defence were circulated in respondent's office vide letter dated March 17, 2016 for taking necessary action and ensuring strict compliance of the same. It is their case since the plans had already been sanctioned as explained above and another application for revised sanction plans had been moved by the NDSF, which were still pending on the date of circulation of letter dated March 17, 2016, the NDSF was asked to get the NOC from the Defence Establishment vide letter dated May 04, 2016. It is Nr. DMC's case that later, UBBL-2016 got implemented in North DMC w.e.f June-2016. Accordingly, vide letter dated September 27, 2016, the petitioner was asked to bring the proposal of revised building plans of the proposed hospital building within the ambit of UBBL-2016 as the same was earlier submitted as per BBL-1983. The earlier instructions for getting the NOC from External Agencies like DFS, Defence Establishment, AAI etc were also reiterated in the said letter. It is their case that the Station Commander, Delhi Cantt. vide letter

dated December 10, 2016 informed the North DMC that the hospital under construction will be a security hazard for Ordnance Depot, Shakur Basti and hence no objection certificate cannot be given by the Station Commander Delhi Area in terms of provision of para 1 (b) of Ministry of Defence, Govt. of India letter dated May 18, 2011. The Station Commander further requested that the intended construction of the Hospital by NDSF be not allowed to be undertaken at the site in close vicinity of Ordnance Depot Shakur Basti. The said letter dated December 10, 2016 of Station Commander was forwarded to Zonal Building Deptt.-I / Rohini Zone of Nr. DMC for taking necessary action in the matter following due process of law. It is further their case, from the said letter dated December 10, 2016 of Station Commander, it was also revealed that the owner had asked NOC for 70 mtr. height of proposed hospital building (15-16 storey), whereas the proposal of revised building plan submitted by the petitioner was only for 45 meters (approx). Therefore, vide letter dated December 26, 2016, NDSF was requested to get the NOC from Defence establishment for 45 met. (approx) height of the proposed building as per the proposal submitted with respondent / North DMC and also to comply with the directions issued by the

Station Commander vide letter dated December 10, 2016.

11. It is the case of the Nr. DMC that in response to the said letter, the NDSF vide letter dated December 29, 2016 informed that Ministry of Defence, vide its letter dated October 21, 2016 has already issued the new guidelines for issuance of NOC. The Station /OD Shakur Basti is listed at Sr. No. 144 in Part-A of Annexure and as per Point No. (a) of the new guidelines *"Security restrictions in respect of Defence establishments / installations located at 193 stations as listed in Part A of Annexure to this circular shall apply up to 10 meters from the outer wall of such Defence establishments / installations to maintain clear line of sight for effective surveillance. Any construction / repair /activity within such restricted zone of 10.0 mtrs. will require prior No Objection Certificate (NO C) from the Local Military Authority (LMA) / Defence Establishment"*. NDSF further submitted that their site is 100 mtrs. away from the Shakur Basti, Defence boundary wall and main approach road is 45.0 mtrs. in front of the project boundary wall. Hence, no NOC was required as per their stand. Accordingly, Nr. DMC vide its letter dated January 13, 2017, requested the Station Commander to offer comments and confirmation of denial/rejection already

issued vide letter dated December 10, 2016 in the light of the new circular / guidelines dated October 21, 2016 of Ministry of Defence and for the 45.0 mtrs (approx) height of the building as per the revised proposal submitted with the North DMC. It is their stand, notwithstanding the response from the Commandant, the Zonal Building Deptt.-IIRZ vide their letter dated January 17, 2017 and February 20, 2017 asked the NDSF to stop the construction work till the procurement of NOC from Ordnance Depot, Shakur Basti. In response to the letter dated January 13, 2017 of North DMC, the Station Commander vide his letter dated February 10, 2017 again denied the NOC with the remarks that the hospital building even upto height of 45.0 mtr. will be a security hazard for OD Shakur Basti and therefore, No Objection Certificate for construction of such a building cannot be given to them. Thereafter, in consultation with CLO / North DMC, the Respondent / Building HQ, North DMC vide its letters dated May 12, 2017, June 01, 2017 and July 31, 2017 sought clarification from the Dy. Director (Lands), Ministry of Defence (the issuing authority of guidelines for NOC) and the Station Commander, Station HQ, Delhi Cantt. with respect to veracity and genuineness of the said MoD circular dated October 21, 2016 as well as its

applicability in the instant case. However, no reply / clarification to these letters of Building HQ, North DMC has been received so far from the concerned authority of Ministry of Defence/ Station Commander.

12. Insofar as revised building plan is concerned, it is the case of Nr. DMC that at present the case of revised building plans submitted by the NDSF vide file No. 63/B/HQNDMC/2015 dated October 13, 2015 for the proposed hospital building of 45.0 mtr. Height (approx) is pending / held up mainly due to rejection of NOC by the Defence Authorities i.e Station Commander, Station HQ, Delhi Cantt and pending clarification to the letters dated May 12, 2017, June 01, 2017 and July 31, 2017 of the North DMC.

13. Insofar as construction at site is concerned, it is the case of the Nr. DMC, that vide their status report dated January 03, 2018, the Zonal Building Deptt.-I/K.P. Zone has reported that the impugned site has again been inspected on January 03, 2018 and no ongoing construction work was found at site. The existing construction consist of basement only and no construction activity has been carried out after issuance of work stop notice in the month of February, 2017. It is the case of Nr. DMC that in

view of the fact that the Nr. DMC has not sanctioned the revised sanction plan due to pending NOC from the Commandant and has not permitted raising of any further construction under the earlier approved plan, in view of the objection taken by the Commandant, nothing survives against the Nr. DMC in the instant writ petition and seeks the dismissal of the writ petition.

14. No rejoinder to the counter affidavit filed by Nr. DMC, has been filed by the petitioner/commandant.

Facts in W.P.(C) 9883/2017:-

15. The present petition has been filed by NDSF with the following prayers:-

“It is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to issue:-

a) Writ order or direction in the nature of mandamus, thereby directing the respondent No.2 to sanction the revised building plans of the petitioner with respect to its proposed hospital to be constructed at site No.2, Zone-H-4/5, Facility Centre, Pitampura, Delhi-110034, without insisting or compelling the petitioner to obtain NOC from the respondent no.1 and 3 as per its letter dated September 27, 2016;

b) To pass such other or further order which this Hon’ble Court may deem fit and proper in the circumstances of the case, in favour of the petitioner and against the respondent.”

16. The NDSF was allotted a plot by DDA vide Perpetual

Lease Deed dated June 02, 2015 with effect from June 26, 1996.

As per the zonal layout plan of the area, the plot in question is meant for Hospital only. It is the case of the NDSF that it obtained all requisite permissions for construction of hospital i.e height clearance from AAI, DUAC, NOC from fire department, electricity, water connection, sewage scheme, store water drainage by Delhi Jal Board. NDSF applied for sanction of Building plans for construction of charitable hospital with Nr. DMC on March 13, 2012. Petitioner got sanction of plans by Nr. DMC with 100 FAR, height of 33.5 mtrs vide letter dated July 08, 2013. It is the case of the NDSF that vide notification dated September 23, 2013, the Ministry of Urban Development, Govt. of India, notified the increase in the FAR from 100 to 375 for hospital land in Delhi, in cases wherein, the area of hospital plot is more than 2.5 ha. The NDSF after having the knowledge of this increase in FAR, applicable to the hospital building, applied for revised building plans vide its application dated October 08, 2015, with the Nr.DMC after paying the requisite charges of Rs.9,68,000/-, for the height 45 mtr (although the FAR available to the petitioner as per the notification dated September 23, 2013 was 375, without restriction of height). The NDSF applied for

the height of 45 mtr and FAR 150 in the revised drawings for the limited purpose to avail the benefits of revised FAR only to the extent that, it can avail the benefits thereof within its financial resources available with it. It is the case of the NDSF that it again applied for requisite permission for height clearance with Airports Authority of India but with the height of 70 mtr considering its future expansion plans, which was allowed by Airports Authority of India vide its letter dated September 29, 2016. The NDSF obtained the approval of its revised building plan from DUAC on September 07, 2016, and from CFO (Chief Fire Officer) on February 10, 2017. NDSF further applied for NOC for its proposed hospital with the Station Commander, Delhi Cantt., which request was rejected vide letter dated December 10, 2016 on the ground that hospital will be a security hazard for Ordnance Depot, Shakur Basti. It is the case of the NDSF that as per guidelines issued by Ministry of Defence dated October 21, 2016 NDSF was not required to take prior NOC from local Military Authorities, in case the proposed building is located more than 10 mtrs away. Here hospital to be constructed by the NDSF was at a distance of approximately 100 mtr. from the outer wall of the Ordnance Depot. The NDSF wrote another

letter dated December 29, 2016 to the Nr. DMC informing about the rejection of NOC, to which Nr. DMC vide its letter dated January 13, 2017 forwarded the petitioner's contention before the Commandant. The NDSF made a similar request to Ministry of Defence dated January 20, 2017 requesting the Station Commander and Col. (Lands) to issue NOC in favour of Nr. DMC as distance between proposed hospital site and Shakur Basti Depot is almost 100 mtrs. In reply to this letter, Commandant vide letter dated February 10, 2017 again stated that hospital building will be a security hazard for Ordnance Depot, Shakur Basti, therefore NOC cannot be given and directed Nr. DMC to stop illegal construction of hospital by the NDSF. The NDSF also made similar requests on different dates to different authorities and after long correspondence, vide letter dated May 12, 2017 requested Ministry of Defence for clarification with respect to denial of NOC for construction of the petitioner's hospital in light of circular dated October 21, 2016. The said letter has not been replied to by the Ministry of Defence /Commandant till date. It is the case of the NDSF that adjacent to the Ordnance Depot, a twelve storey hotel has already been constructed in which the issue related to NOC was not raised by

the Commandant. The proposed hospital and the Ordnance Depot are located in highly dense residential area and entire area is surrounded by commercial buildings, hospitals, colleges etc, which are much closer to the Ordnance Depot than the proposed site for hospital. It is further the case of the NDSF that as per Delhi Building Byelaws 6.7, Nr. DMC is duty bound to either sanction or refuse the plans of the NDSF within 60 days of the receipt of notice under Byelaws 6.1., and on failure, the same shall be deemed to have been sanctioned. Therefore, in the present case, the revised building plans which have been withheld by the Nr. DMC without any logic / justification shall be deemed to have been sanctioned as per Delhi Building Byelaws 6.7.

17. The stand of the North DMC in the counter affidavit is similar to one already referred to above under W.P.(C) No. 6901/2017 and the same is not repeated for the sake of brevity.

18. It is the case of the Commandant in the counter affidavit that the NDSF is constructing a high rise hospital consisting of more than 10 floors illegally and without authority. The building is planned to be raised up to a height of 70 mtr. and the distance between the boundary of the Ordnance Depot, Shakurbasti and the site of construction is a mere 47.06 mtr., perennially

endangering the safety and security of the military establishment. Therefore, the NOC for the construction of such a building was never given to the NDSF.

19. It is the case of the Commandant that as per clause 2.18.1.1 of the UBBL 2016, all building plans shall be submitted to the building sanctioning authority / concerned local body. The said body shall issue the sanction after receiving all requisite documents within the time limit stipulated in chapters 2 and 3 for various categories of buildings specified therein or within 30 days, whichever is less.

20. It is further submitted by the Commandant that since the UBBL Delhi 2016 has come into force, the building in question cannot be constructed without conforming to the relevant necessary provisions of the same. It is further submitted that according to the letters dated September 27, 2016 and January 13, 2017 issued by the Executive Engineer Building, Nr. DMC it is evident that only the DUAC had approved the building plan of the NDSF vide letter dated September 07, 2016, whereas NOC from other local civic authorities like DFS, Defence Establishment, AAI, DMC/MMA, DJB, NDPL are still awaited. It is further submitted that despite being issued notices to

complete compliances by the Executive Engineer Building vide I/N dated October 19, 2015 and November 10, 2015 and further reminders having been sent on various subsequent dates the compliances had not been done so far. It was also stated by respondent No.2 that UBBL 2016 have come into force in Delhi and therefore, the building plan should be modified and revised proposal, if any, to be got approved from the external agencies.

21. It is the case of the Commandant that even though Nr. DMC had granted sanction for construction of the building back in 2013, no details or intimation of the same was given to the local military authorities. The station commander took up the matter with various local Authorities vide letter dated December 10, 2016 and expressed serious security concern and reservations about the proposed hospital coming up with a height of 70 mtrs., in close vicinity of Ordnance Depot, Shakurbasti and therefore recommended that NOC being sought by the NDSF be not granted.

22. It is the case of the Commandant that the NDSF approached his office in September 2016, when the Ministry of Defence policy letter dated May 18, 2011 was in vogue and applicable, and which stipulated that construction of buildings

coming up within a radius of 500 mtr. for buildings of more than four storeys and a radius of 100 meters for other buildings from a defence establishment, if deemed to be a security hazard by the Station Commander, then even if the local municipal laws do not so require, yet the matter shall be referred to a higher authority for objections/views which will then be conveyed to the local municipal or State Government agencies.

23. It is the case of the Commandant that the building being constructed is being planned to be raised upto a height of 70 mtrs. and the distance being 47.06 mtr. it comes within the restriction zone and therefore, requires prior NOC from the local military authority / defence establishment. The Commandant has also stated that the Municipal Authorities have given clearances for construction of only a building of up to 45 mtrs., the petitioner intend to carry construction of a 70 mtrs. high building, thereby going ahead with construction illegally and without authority.

24. It is the case of the Commandant that he / Station Commander vide letter dated January 06, 2017 to the Commissioner Nr. DMC emphasized that the building will be a security hazard and be not allowed. The NDSF vide letter dated February 01, 2017 approached the headquarter, Delhi Area (Land

Branch) requesting for issuance of NOC in favour of Nr.DMC. Board of Officers vide order dated February 07, 2017 came to the conclusion that the high rise building if allowed to be constructed will pose a security threat to the Ordnance Depot. Furthermore, the proceedings were submitted to the GOC, Delhi Area, who vide directions dated March 28, 2017 held that NOC cannot be given.

25. The DDA has also filed a counter affidavit stating that the land admeasuring 3.0 Ha in Zone 4 and 5 facility centre Pitampura was allotted to the NDSF vide letter dated May 22, 1996 and physical possession of the same was handed over to the NDSF on June 26, 1996. As per the Zonal Development plan, the plot in question is earmarked for Hospital.

26. No rejoinder affidavit has been filed by the NDSF to any of the counter affidavits.

Submissions

27. Mr. R. Balasubramanian, learned counsel for the Commandant apart from reiterating the stand taken in the writ petition / counter affidavit, insofar as serious security implications are concerned, submitted that the proposed high rise hospital building is in very close vicinity and proximity to the

Ordnance Depot, Shakurbasti, a Military Establishment, and would perennially endanger the latter's safety and security. He submitted, national security and safety of the country and its military establishments is of paramount importance. In the prevailing security scenario especially, in view of the fact that terrorists try to attack vital army establishments/ units with a view to spread panic and terror amongst the populace, although such attacks are successfully repulsed, there is an inherent danger in allowing buildings including high rise buildings to come up near military establishments in view of their potential threats to the Units. Resultantly, such building(s) if allowed to exist/come up unhindered without due regard to safety and security of the military establishments, the same will be detrimental to larger public interest. He submitted that with the advancement of modern technology and sophisticated weaponry available to the terrorists and anti national elements, allowing high rise buildings to come up in close vicinity near military units may provide a 'billet' for perpetrators of anti national activities. Not only that it may expose the Unit(s) to inherent danger from outside its perimeter fence both vertically and horizontally, but it may also facilitate deep surveillance/ intrusion into activities being carried

out inside the Unit from vantage points of such high rise buildings. He submitted that Ordnance Depot, Shakur Basti is one of the vital logistic installations catering the Indian Army in general and the Western Command of the Indian Army in particular. Due to security reasons the petitioner is unable to place it on record the type of war like stores held by it in its inventory. But suffice to state that it caters to logistic needs of war like stores required by army about 700 Formations and Units both in times of War and Peace. With such high risk inventory on its stock, both in terms of volume and intensity, the petitioner can ill afford to be lax in ensuring its safety and security both from within the premises and outside its perimeter fencing. The construction of high rise building if allowed to be completed, it may facilitate security threat and direct observance of inside activities of the Depot from vantage points of the building. He submitted that the Commandant (petitioner in 6901/2017) has already carried out a security audit of threat perceptions emerging from such high rise buildings coming up in near vicinity. The building is being constructed within 50 meters distance of the boundary wall of the Depot.

28. On the aspect of guidelines issued by Ministry of

Defence, Government of India dated May 18, 2011, March 18, 2015 and October 21, 2016, he submitted, in terms of paragraph 1 (b) of the Guidelines issued by the Govt. of India, Ministry of Defence dated May 18, 2011 where the Station Commander feels that any construction coming up within 100 meter radius of a defence establishment can be a security hazard, the Station Commander may convey his views/objections to the local municipality/State Government. The said guidelines dated May 18, 2011 further stipulate that in case of multistory building of more than four storeys, the distance is extended to 500 meters radius of the military establishment. Therefore, in the present case, the proposed hospital building is admittedly more than four storeys and hence the objections of Station Commander were conveyed to the NCTD/ Nr. DMC. This position has been reiterated by the Govt. of India, Ministry of Defence vide its subsequent letter dated March 18, 2015. He submitted, in the present case, admittedly initial sanction was accorded by GNCTD / Nr. DMC on July 08, 2013 and the revised plan sanction was submitted by NDSF on October 08, 2015. Therefore, the guidelines dated May 18, 2011 read with letter dated March 18, 2015 are fully attracted and applicable in present case. He

submitted, the contention of NDSF that by subsequent letter dated October 01, 2016 the Govt. of India, Ministry of Defence has relaxed the norms for grant of NOC and therefore, the earlier guidelines dated May 18, 2011 stand amended and consequently the NOC cannot be insisted upon is misconceived and misleading. He submitted that the guidelines dated May 18, 2011 have not been superseded by subsequent letter dated October 21, 2016. In fact the letter dated October 21, 2016 makes reference in first para itself to earlier letters on the subject issued by Ministry of Defence, Govt. of India, including the guidelines dated May 18, 2011. He submitted that the guidelines dated May 18, 2011 and subsequent letter dated October 21, 2016 have to be read together and harmoniously construed keeping their objective in mind i.e., safety and security of military establishments in close vicinity of high rise buildings. It was further his submission, the letter dated October 21, 2016 has only re-visited the distance part of restrictions i.e., horizontal distance from the outer wall of the defence establishment from proposed constructions in close vicinity. The letter dated October 21, 2016 has amended erstwhile distance from 100 meters to 10 meters in so far as stations listed in Part A of the Annexure to the said

letter. However, the height restriction for multi-storied building imposed vide guidelines dated May 18, 2011 has not at all been interfered with by subsequent letter dated October 21, 2016 in so far as stations listed in Part A of the Annexure.

29. It was the submission of the learned counsel for the Commandant that the height restriction of the building shall apply with effect from May 18, 2011 as clarified by subsequent letter dated March 18, 2015 and at the time of grant of original sanction on July 08, 2013 by respondent Nos. 1 to 3 as well as at the time of submission of revised sanction plan by NDSF on October 08, 2015, the guidelines dated May 18, 2011 were very much in force. Hence the NOC was required from Station Commander. This is without prejudice to the submission that even by subsequent letter dated October 21, 2016 the height restriction for multistoried building of more than 4 storeys has not been taken away. To contend that the communication dated October 21, 2016 has absolutely taken away the height restriction for building beyond 10 meters in respect of stations listed in Part A of the Annexure will lead to anomalous and inconsistent interpretation.

30. In so far as existence of other high rise buildings like one high rise hotel building LA in close vicinity of Ordnance Depot,

Shakur Basti is concerned, learned counsel for the Commandant submitted that the Commandant has filed its affidavit in connected Writ Petition No. 9883 of 2017 explaining in detail the steps taken by the army authorities objecting to construction of Hotel LA coming up and the correspondence exchanged with Govt of NCT and its agencies have been placed on record. It was his submission, vide letters dated April 01, 2016, October 25, 2016, December 03, 2016 and February 04, 2017, the Municipal Authorities were requested to intervene and direct the owner of the Hotel to stop construction immediately as it was a serious security threat. The matter was also reported to SHO PS, Mangolpuri by OD Shakurbasti vide letter dated April 07, 2017 drawing the attention to prevalent security situation and security threats and the police was requested to lodge an FIR for stopping the construction work. That the army authorities also came to know that the Police registered FIR No. 2887 on April 08, 2017 and that the construction work was stopped. That in the meantime, the North Delhi Municipal Corporation vide its letter dated May 16, 2017 intimated that Delhi Development Authority is the custodian in the case as the land had been allotted to the Hotel as well as the building plans were approved by the DDA.

Therefore, the DDA was approached by the Unit vide letter dated May 31, 2017 to stop the construction work including construction of road by the Hotel since it involved security of military installation. That the DDA through its Deputy Director (Building) intimated the Unit OD Shakurbasti vide letter dated June 21, 2017 forwarding building plan of the Hotel and also stated that the issue of completion certificate is on going process and in case the Unit has any objection regarding issue of completion certificate the same may be intimated. The DDA was also requested vide letter dated June 24, 2017 not to issue completion certificate to the Hotel LA.

31. As far as closing of Ordnance Depot is concerned, learned counsel for the Commandant submitted that during the course of hearing it was also submitted on behalf of NDSF that a decision has been taken by the Govt. of India to close down some of the Ordnance Depots including Ordnance Depot, Shakurbasti. He submitted that no doubt some decision in principle has been taken after filing of the writ petition to close down some Depots including Ordnance Depot Shakurbasti. But that decision is yet to fructify and it is still at initial stage. The decision is still at a preliminary stage and it would be premature at this stage to say

anything in this regard. Therefore, the NDSF cannot contend at this stage that the NOC cannot be insisted upon from army authorities. In the end, it was his submission that the petitioner (Commandant), at every stage had taken up the matter with municipal authorities not to allow construction of high rise Hotel building in close proximity of the defence unit. The petitioner has followed uniform stand in the matter of taking action to safeguard the safety and security of OD Shakurbasti from the security threat from such high rise buildings in vicinity of the Unit. He seeks the reliefs as prayed for in W.P.(C) 6901/2017

32. Mr. Arvind Nigam, learned Senior Counsel for the NDSF, had submitted that NDSF with an intention to establish a charitable hospital for the benefit of public in Delhi was allotted the plot in question in the year 1996. The perpetual lease was executed on June 02, 2015. As per the Zonal Development Plan, the plot is meant for Hospital only. He submitted that the NDSF had applied and got sewage / water / electricity connections. Even NOC has been granted by the AAI with respect to height of its project vide letter dated June 13, 2012. That apart, according to him even DUAC granted permission for the project, so also the Chief Fire Officer. The petitioner got sanction of building plan

with 100 FAR and height of 33.5 mtrs vide letter dated July 08, 2013 of Nr. DMC. According to him, vide notification dated September 23, 2013, the Ministry of Urban Development notified increase in the FAR from 100 to 375 for hospital land in Delhi, wherein the area of the Hospital plot is more than 2.5 ha. The NDSF had applied for sanction of revised building plans vide its application dated October 08, 2015 for height of 45 mtrs and FAR 150, (and 70 mtr considering its future expansion plans) but the petitioner (NDSF) is now willing to construct the Hospital as per sanctioned plans i.e 100 FAR with height of 33.5 mtr. He also, by drawing my attention to the guidelines of 2011 and 2016, submitted, that the guidelines of the year 2016 superseded the guidelines of 2011 with regard to grant of NOC for building construction. As per the guidelines of 2016, construction in vicinity of Defence establishment / installations listed in Part A, (Shakurbasti is at Serial No.144) shall require NOC from local military authorities, if the subject construction is within 10 mtrs. from the outer wall of such Defence establishment. According to him, since the Hospital land in question is at a distance of approximately 100 mtrs from the outer wall of the Ordnance Depot, no NOC is required. He submitted that in one case of a

hotel building constructed by M/s LA Hotel and Retreats Pvt. Ltd. at plot No. 43, Pitampura Delhi, the Completion Certificate has been granted by the DDA. It was his submission that the Hotel building is just adjacent to the Ordnance Depot, there is no reason to deny NOC to the NDSF for construction of a Hospital across the 45.0 mtrs. main approach road, between hospital and boundary wall of the Ordnance Depot.

33. Mr. Nigam has also drawn my attention to a news item, appeared in the Economic Times dated April 03, 2018, to contend that a decision has been taken to shut down the Ordnance Depot at Shakurbasti. The plea of the Commandant that, the construction of a Hospital building shall be a security risk, shall no more be valid. He stated that, the very basis for denying NOC, shall cease to exist. It was also his submission, that the Zonal Development Plan shows the site to be meant for Hospital, and it is the Hospital only which can come up there. So, it shall be appropriate that the NDSF is allowed to construct the Hospital, which shall be in the larger public interest. In any case, the Ordnance Depot deals with general clothing for the personnel and as such the plea of breach of security shall be unsustainable. He prays for grant of relief in W.P.(C) 9883/2017.

34. Mr. Ajjay Aroraa, learned counsel for the Nr. DMC has reiterated the stand taken by the Corporation in its counter affidavit.

35. Having heard the learned counsel for the parties, the prayers sought for by the parties in these two writ petitions are, diametrically opposite to each other, inasmuch as in W.P.(C) 6901/2017 the Commandant has sought for quashing of the sanction accorded to the NDSF for construction of building at site H-4/5, Facility Centre, Pitampura, Delhi and also a permanent restraint order against NDSF from constructing a high rise building. On the other hand, the prayer of NDSF in its writ petition is for according a sanction of the revised Building Plans at the same site without insisting or compelling the NDSF to obtain NOC from the Commandant.

36. On facts, there is no dispute that the NDSF initially got sanction of the plan with 100 FAR with height of 33.5 mtrs vide letter dated July 08, 2013. It may be necessary to state here, that it is the case of the Commandant, that in terms of the guidelines of May 18, 2011, any construction of building of more than four storeys coming up within a radius of 500 mtrs of the defence establishment, the matter shall be referred to a higher authority by

the Station Commander for objection / views which will be then conveyed to the State Government / Municipality. It is also the case of the Commandant that the site of construction is a mere 47.06 mtrs from the boundary of the Ordnance Depot and therefore, a prior NOC is required to be taken from local military authority / defence establishment. It is also averred that no such NOC, was taken from the Commandant when sanction of plans of 2013 were granted by Nr. DMC. The aforesaid stand of the Commandant, appears to be right, as nothing has been placed on record to show that NOC was granted / taken. In terms of the guidelines of May 18, 2011 the requirement of NOC was in terms of the following stipulation

(b) 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 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.

37. In fact, it is the stand of the NDSF that the subject

building is 100 mtrs (letter dated April 03, 2017) away from the Ordnance Depot. It is not the case of NDSF, that the building is less than four storeys. So it follows, the NOC was required to be taken by the Nr. DMC, before sanctioning the plans of NDSF.

38. Having said that, I note, it is pursuant to the notification dated September 23, 2013 of the Ministry of Urban Development, Govt. of India whereby the FAR was increased from 100 to 375 for Hospitals in Delhi, where the Hospital plot is more than 2.5 ha, the NDSF had applied for revised building plans vide its application dated October 08, 2015. The NDSF had applied for the height of 45 mtrs and FAR 150 in the revised drawings and had applied for height clearance from AAI with a height clearance of 70 mtr considering its future expansion plans. It is a fact that NOC for the proposed hospital was declined by the Commandant vide its letter dated December 10, 2016 on the ground that it is a security hazard for Ordnance Depot, Shakurbasti. It is to be seen whether this denial of NOC for revised plans by the Commandant is justified. The parties have referred to the guidelines of 2011, 2015 and 2016. Mr. Nigam has stated that in terms of guidelines of 2016, which superseded 2011 guidelines the NDSF requires NOC, if the construction is

within 10 mtrs of the defence establishment and in this case since the construction is beyond 10 mtrs, no NOC is required. Whereas Mr. Balasubramanian's case is, guidelines of May 18, 2011, letter of March 18, 2015 and guidelines of October 21, 2016 have to be read together, as the height restriction as existed in the guidelines of 2011 has not been interfered with / amended. In other words, in the guidelines of 2016, the height restriction of four storeys has not been taken away, and the building beyond four storeys cannot come up within a radius of 500 mtrs.

39. In order to appreciate the submission, it is necessary to reproduce the guidelines of 2011, contents of letter dated March 18, 2015 and the guidelines of 2016.

"New Delhi, dated 18th May, 2011

To

The Chief of Army Staff

The Chief of Air Staff

The Chief of Naval Staff

New Delhi.

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

Of late, issue of NOC for construction on lands adjacent to Defence Establishments has generated avoidable controversies particularly in two recent

cases, viz. Sukna and Adarsh. Various issues involved in these two cases were reviewed and the matter has been considered in detail in the Govt. in consultation with the services. It is felt that Works of Defence Act, 1903 which imposes restrictions upon use and enjoyment of land in vicinity of Defence Establishments needs to be comprehensively amended so as to take care of security concerns of defence forces. While the process of amendment has been put in motion and may take some time, it was felt necessary to issue instructions in the interim to regulate grant of NOC. The objective of these instructions is to strike a balance between the security concerns of the forces and the right of public to undertake the construction activities on their land. Following guidelines are therefore laid down:

(a) In places where local municipal laws require consultation with the Station Commander before a building plan is approved, the Station Commander may convey its views after seeking approval from next higher authority not below the rank of Brigadier or equivalent within four months of receipt of such requests or within the specified period, if any, required by law. Objection/ views/ NOC will be conveyed only to State Government agencies or to Municipal authorities, and under no circumstances shall be conveyed to builders/ private parties.

(b) 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 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.

(c) Objection /views/NOC shall not be given by any authority other than Station Commandar to the local municipality or State Government agencies and shall be given directly to private parties/builders under any circumstances.

(d) NOC once issued will not be withdrawn without the approval of the Service.

2. These instructions will not apply where constructions are regulated by the of the existing acts/notification viz., Cantonments Act, 2006, Air Craft Act 1934, Gazette Notification SO 84(E) dated

14.01.2011 (as revised from time to time) works of Defence Act 1903, etc. in such cases provisions of the concerned (Notification) will continue to prevail.”

“New Delhi, dated 21st October, 2016

To

*The Chief of Army Staff
The Chief of Air Staff
The Chief of Naval Staff*

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.”

“New Delhi, dated 18th March 2015

To

*The Chief of Army Staff
The Chief of Air Staff
The Chief of Naval Staff*

Subject: Guidelines for issue of ‘No Objection Certificate (NOC) for building constructions’.

I am directed to refer to circular of even number dated 18.05.2011 vide which guidelines for issue of ‘No Objection Certificate (NOC) for building constructions’ were issued. Following the issue of the guidelines representations and references have been received with regard to restrictions placed by these guidelines on building construction in the vicinity of Defence Establishments. It was therefore decided to undertake a comprehensive review of the guidelines so as to address issues that had arisen from the implementation of the guidelines.

2. The recommendations arising from the review

undertaken have been duly considered by the Ministry and it has been decided to modify the aforementioned Circular dated 18.05.2011 by adding a proviso under para 1(b) to the effect that NOC from LMA/Defence Establishment would not be required in respect of a construction for which permission had been issued by the competent local municipal authority prior to 18.05.2011 (date of circular). However, this proviso shall not apply to any amendment to the said construction permission with regard to height, if such amendment has been allowed after 18.05.2011.

3. The other provisions of the circular dated 18.05.2011 will remain unchanged.”

40. Having noted the guidelines / instructions, I must state that the argument of Mr. Subramaniam appears to be appealing on a first blush, but on a deeper consideration, it is seen that, the guidelines of October 21, 2016 have been issued because of representations received from the elected representatives to review the guidelines of 2011, as difficulties are being faced by public in constructing building on their own and pending amendments to works of Defence Act, 1903, the Government decided to amend the guidelines of May 18, 2011 read with letter dated March 18, 2015. So it is clear, that guidelines of October

21, 2016 were issued as amendment to the guidelines of 2011 / 2015. I may state here, the guidelines of 2011 inter alia stipulates any construction coming up within 100 mtrs (for multistory building of more than four storeys, the distance shall be 500 mtrs) requires NOC from the Station Commander. But in the guidelines of 2016, the words “*for multistory building of more than four storeys the distance shall be 500 mtrs*” are missing. The endeavour of Mr. Subramanian is to contend that, by implication the said words must be read in 2(a) of the guidelines of 2016. I am afraid such a plea cannot be accepted. The Clause 2(a) of 2016 guidelines only stipulates a restriction of 10 mtrs with regard to installations located at 193 stations as listed in Part A of Annexure to the circular that too, to maintain a clear line of sight for effective surveillance. There is nothing in the circular to show any restriction has been put for construction beyond 10 mtrs. In other words, the words “*for multistory building of more than four storeys the distance shall be 500 mtrs*” have not been stipulated in the guidelines of 2016, which have been framed as amendment to 2011/2015 guidelines. Further the words ‘*Any construction or repair activity within such restricted zone of 10 mtrs will require prior No Objection Certificate (NOC) from the*

Local Military Authority (LMA) / Defence Establishments” also throw light, that construction activity beyond 10 mtrs without height restriction is permissible. If the Authority intended to put any restriction on the height, it would have specified so, as was done in Clause 2(b) of the guidelines dated October 21, 2016. The effect of the amendment is that it shall replace the old guidelines of 2011/2015 and shall continue to govern the issue of NOC for building construction, w.e.f October 21, 2016. So, the construction of building above four storeys beyond 10 mtrs. is permissible. In fact, this is how the Commandant has also, read the guidelines to mean. This I say so, as pointed by Mr. Nigam that, the Commandant has not objected to the construction of a Hotel, with nine floors of a height of 36 mtrs. The Commandant has given some justification as to what action he has taken on such construction. But the fact is, the Hotel is in place and a Completion Certificate has been issued to the Hotel. So, the plea of Mr. Balasubramanian is without any merit and is rejected.

41. That apart, during the course of his submissions, Mr. Nigam had submitted that a decision has been taken by the Authority concerned to close down the Ordnance Depot, Shakur Basti. In other words, the very basis for not allowing the NDSF

to make the construction of the building would no more exist.

42. On the other hand, Mr. Subramanian conceded to the fact that some decision has been taken in principle after the filing of the writ petition to close down some depots including the Ordnance Depot, Shakur Basti. The said decision is yet to fructify and it is still at initial stage. In other words, it is premature at this stage to say anything in that regard.

43. From the submission of Mr. Subramanian, it is clear that such a move is on in the Ministry of Defence. In any case, the said plea would not be necessary to be gone into, in view of my above finding on the guidelines of 2016.

44. I may clarify here that the sanctioning of plans by Nr. DMC in 2013 even though was not in accordance with the guidelines of 2011 as the construction of building in question has to be more than four storeys and construction of building beyond four storeys within 500 mtrs was impermissible but in view of the later amendment of the said guidelines in the year 2016 without such a stipulation, today the relief as sought for by the Commandant challenging the sanction plans by Nr. DMC shall be unsustainable and as such the relief prayed for in W.P.(C) 6901/2017 cannot be granted. The writ petition is liable to be

dismissed. Ordered accordingly. The W.P.(C) 9883/2017 is allowed by declaring the Commandant cannot insist on NOC be taken from defence establishment by NDSF for making construction of building at Site No.2, Zone H-4/5, Facility Center, Pitampura, Delhi-110034.

No costs.

CM No. 28665/2017 (for stay) in W.P.(C) 6901/2017

CM Nos. 40283/2017 (for interim directions) in W.P.(C) 9883/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

JANUARY 11, 2019/jg/ak