

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Before: Hon'ble Justice Shampa Sarkar

W.P.A. No.13756 of 2021

with

CAN 2 of 2022

with

CAN 3 of 2022

The Commandant, Ordnance Depot
Vs.
The Kolkata Municipal Corporation & Ors.

For the Petitioner

*Mr. Nandalal Singhanian,
Mr. Vipul Kundalia,
Mr. Debu Choudhury.*

For the K.M.C.

*Mr. Achinta Kr. Banerjee,
Mr. Ranajit Chatterjee,
Ms. Indumouli Banerjee.*

For the State

*Mr. Anirban Ray, Id. GP,
Mr. Raja Saha,
Mr. Rajat Dutta.*

For the Respondent No.5

*Mr. P. Chidambaram, Sr. Advocate,
Mr. Abhrajit Mitra, Sr. Advocate,
Mr. Debanjan Mandal,
Mr. Arindam Banerjee,
Mr. Biswajit Kumar,
Mr. Raja Baliyal,
Mr. Debayan Sen,
Ms. Mahima Cholera .*

For the Respondent No.6

*Mr. Anindya Kr. Mitra, Sr. Advocate,
Mr. Kishore Datta, Sr. Advocate,
Mr. Soumya Majumdar,
Mr. Sarvapriya Mukherjee
Mr. Soumya Ray Choudhury
Mr. Deepan Sarkar,
Ms. Shruti Swaika,
Mr. Sourav Bhagat,
Ms. Yukti Agarwal.*

For the BSNL.

Mr. Rajib Mukherjee,

*Ms. Supriya Dey Barat,
Ms. Shreyasi Bhaduri.*

For the respondent No. 15

Mr. Sanajit Kumar Ghosh.

Hearing concluded on: 17.05.2022

Judgment on: 08.07.2022

Shampa Sarkar, J.:-

1. The petitioner is the Commandant in Charge, Ordinance Depot situated at 40, Remount Road, Kolkata. The petitioner prays for appropriate directions upon the Kolkata Municipal Corporation, to withdraw, cancel and/or quash the building plan that was sanctioned in favour of DS.K. Real Estate Limited, the respondent no. 5. Prayer for a writ in the nature of mandamus, restraining the respondent nos. 4 and 5 from taking steps in furtherance of the sanction plan, was made. An ad-interim order of injunction, restraining the ongoing construction at premises no. 34, Diamond Harbour Road, was prayed for.

2. The contention of the writ petitioner was that the Kolkata Municipal Corporation, (in short KMC) could not have sanctioned the building plan, thereby permitting the respondent nos. 5 and 6 to construct a residential building of about 150 metres in height, in close proximity to the said Ordinance Depot at Kolkata. The depot was a vital military establishment, and the construction of a G+40 storeyed building within a short distance

from the said depot would endanger the safety and security of the military establishment located on a defence land, comprising of an area of approximately, 33 acres.

3. According to Mr. Singhania, learned advocate appearing on behalf of the petitioners, the said depot was the main logistic base for supply and storage of materials primarily for the units and formations of the Eastern Command of the Indian army, both during the times of war and peace. The said depot was used as an ordinance store and several metric tonnes of armoury, clothing, equipment etc., were lying therein. Large number of control stores and materials of high security were stored in the said depot. The materials in the said depot catered to the need of approximately 600 formations/units.

4. Mr. Singhania urged that sometime in 2014, a patrol of the defence establishment reported demolition of an old structure which had once belonged to Williamson Magor Group and was standing on the same premises. On enquiry, it transpired that the property was sold to the respondent no. 5. A construction had been proposed. The petitioner requested the KMC, to stop such construction and advised them to obtain

necessary clearance/No objection certificate (NOC) from the local military authority.

5. The KMC by a communication dated November 11, 2014 forwarded the plan and the drawing of the proposed residential building to be constructed by the respondent Nos. 5 and 6 at premises no. 34, Diamond Harbour Road, to the Lt. Commander for his perusal and observations on the security implication. The request for a No Objection Certificate (NOC) for the proposed G+40 storeyed building, which was within 100 metres radius from the depot, was rejected by the Local Military Authority (LMA). Such rejection was communicated by the station commander to the KMC, by a letter dated March 31, 2015. The proposed G+40 storeyed building was considered to be a security threat and in violation of the guidelines issued by the Ministry of Defence, dated May 18, 2011(hereinafter referred to as the said guideline of 2011). He further referred to the communication dated March 4, 2015 issued by the Brigadier OL, Headquarters Eastern Command, in which the authority had elaborately discussed the serious security implications, in permitting the high rise.

6. According to Mr. Singhania, a Board of Officers (BOO) had been convened to examine the matter. The BOO examined the proposal in details

and recommended that the NOC should not be issued, as the proposed structure was within 100 metres radius from the ordinance depot. Recommendation of the BOO was approved by the headquarters. The Learned Advocate placed the reasons contained in the letter dated March 4, 2015, on the basis of which the request for NOC was considered and rejected.

7. Mr. Singhania, relied upon the guidelines dated May 18, 2011 issued by the Ministry of Defence, Government of India and submitted that any construction within 100 metres from the outer wall of the defence establishment, would require a NOC and/or a clearance from the LMA. Further, a building of more than three storeys could not be constructed up to a distance of 500 metres radius, from the defence establishment, unless a NOC was granted by the LMA. In this case, according to Mr. Singhania, the NOC was once refused, keeping in mind the height of the building and its distance from the outer wall of the defence establishment. He submitted that although the said guidelines dated May 18, 2011, had been amended by addition of two provisos, in the nature of exemptions, such exemptions would not apply in the instant case.

8. The first proviso brought in by the amendment dated March 18, 2015, exempted those constructions which had been permitted by the competent local municipal authority, prior to the date of the circular dated May 18, 2011.

9. On November 17, 2015 a further amendment was brought by adding a second proviso under para 1(b) of the circular dated May 18, 2011. Exemption was made for proposed high rises which were in line with or behind or in the shadow or shield of an existing high-rise building/structure of more than four storeys, even if the same were within the radius of 500 metres. The municipal authority was allowed to grant permission in such cases, after obtaining comments from the LMA.

10. The third circular came in the year 2016, when a further guideline was published by the Ministry of Defence; Government of India dated October 21, 2016 (hereinafter referred to as the guidelines of 2016). According to Mr. Singhania, although the said circular, reduced the distance within which no construction could be permitted without a NOC from the LMA from 100 metres to 10 metres, but the height restriction of three storeys up to a distance of 500 metres from the outer wall of the defence establishment, remained unaltered.

11. Mr. Singhanian urged that a harmonious construction of all the guidelines would lead to a conclusion that the said circular of 2016, did not amend the height restriction imposed by the guidelines dated May 18, 2011(hereinafter referred to as the said guideline of 2011). According to him, the construction of a G+40 storeyed building should not have been permitted by the KMC.

12. The court was urged to intervene and pass necessary orders upon the KMC, for withdrawal and/or cancellation of the sanction granted in respect of the said construction and to pass further order in the nature of a permanent injunction, restraining such construction on the premises situated at No. 34 Diamond Harbour Road.

13. According to Mr. Singhanian, the security hazard had been considered, by the BOO. Each and every aspect of threat to security that was posed by the proposed construction, had been evaluated. Thereafter, the NOC was refused. Under such circumstances, the KMC could not have granted the sanction. Mr. Singhanian further contented that the stand of the respondent Nos. 5 and 6 and the KMC, that the guidelines of 2016 had done away with, all security restrictions beyond 10 metres from the outer wall of the depot including height of the building near military establishments listed under

Part-A of the Annexure, was incorrect. He contended that the guidelines of 2016 should be read as an amendment to the distance clause and not as a substitution of paragraph 1(b) of the guidelines of 2011. According to him, the original restrictions and the subsequent relaxation, if read harmoniously, would indicate that the height restriction of three storeys upto a distance of 500 metres from the LMA, remained unchanged.

14. Mr. Singhania urged the Court to take note of the fact that the Eastern Command as also the Army Headquarters had unanimously decided to file the writ petition for cancellation of the sanction granted by the KMC. He further submitted that the minutes of the meetings held prior to filing of the writ petition, were classified information and could not be revealed in open Court.

15. Mr. Singhania submitted that the high-rise building was within a close proximity of 14 metres or odd and the same would compromise the secrecy, privacy and the sanctity of the defence establishment. The entire activity of the establishment, the materials which were stored therein and supplied therefrom, would be visible to the public. The building was at a stone's throw away and could serve as a base for any anti-national activity.

Possibility of attacks on the said defence establishment from such a height, could not be ruled out. There was no guarantee as to the kind of people who would reside in the said building and the authority would have no means to control such activity. Mr. Singhania referred to some judicial precedents in order to substantiate his contention that when the question of national security was involved, the Ministry of Defence was the sole authority to decide such issues and the Court should not interfere in such cases, by evaluating the wisdom of the LMA which had refused the NOC and was opposed to the construction. The guidelines issued by the Government of India from time to time in this regard, must be followed. On this point, reference was made to the following decisions:-

(a) ***Union of India v. State of Maharashtra***, reported in **2016**

SCC OnLine Bom 2570 – (2016) 4 Bom CR 549

(b) ***TCI Industries Ltd. v. Municipal Corpn. of Greater Bombay***,

reported in **2011 SCC OnLine Bom 1671**,

16. Initially, the writ petition was filed without impleading the Union of India, through the Ministry of Defence, as a respondent. This court was of the view that the guidelines could be best interpreted and explained by the Ministry of Defence. The guidelines of 2016 had been issued by the Deputy

Director Land, Government of India, Ministry of Defence, in consultation with the Chief of Army Staff, Chief of Air Staff and Chief of Naval Staff.

17. Accordingly, by an order dated October 1, 2021, this court directed the petitioner to add the Union of India, through the Ministry of Defence, as a party respondent. Union of India filed an affidavit-in-opposition and averred that the guidelines' of 2016 was an amendment to the guidelines of 2011. It was further averred that the said guidelines of 2016 was under review. Mr. Sanjit Kumar Ghosh, learned Advocate on behalf of the Ministry of Defence, adopted the submissions of Mr. Singhania.

18. According to Mr. Ghosh, security should be the primary concern of the country. A G+40 storeyed structure situated within the vicinity of ordinance depot, posed a real threat to the daily activities within the said depot. He further submitted that threat perception was of supreme concern and the Government of India could impose restrictions. He relied on the following decisions:

(a) ***State of M.P. v. Narmada Bachao Andolan***, reported in **(2011)**

12 SCC 689,

(b) ***Ex-Armymen's Protection Services (P) Ltd. v. Union of India***,

reported in **(2014) 5 SCC 409,**

(c) ***Anuradha Bhasin v. Union of India***, reported in **(2020) 3 SCC 637**

19. Both Mr Singhanian and Mr. Ghosh submitted that the Ordinance Depot at Kolkata was the largest of its kind in the eastern region and the respondent Nos. 5 and 6 had given an incorrect interpretation of the same. It was further urged that the guidelines were mere indicators and provided a broad restriction with regard to the issuance of a NOC. The same was neither conclusive nor absolute. The security assessment made by the LMA in this regard was sacrosanct and could not be called into question. Security assessment had to be made on a case to case basis. In this case, such security assessment had already been made and communicated to the KMC by the LMA, sometime in 2015. Thereafter, the KMC did not have any authority to issue the sanction for construction of the G+40 storeyed building.

20. Mr. Achinta Banerjee, learned advocate appearing on behalf of KMC relied on the affidavit-in-opposition filed by the Kolkata Municipal Corporation and submitted that the military authority itself, had intimated the KMC about the issuance of the guidelines of 2016. On the basis of the same, the sanction was granted upon considering the amended provisions.

According to Mr. Banerjee, the subsequent guidelines of 2016 had completely altered the restrictions which were imposed by paragraph 1(b) of the 2011 guidelines, and the Municipal Commissioner had intimated the Additional Chief Secretary to the Government of West Bengal, Home and Hill Affairs that the KMC and the Board of Administrators, had decided to follow the guidelines of 2016, till an appropriate instruction was received from the state government.

21. Mr. Banerjee submitted that under the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the KMC Act), permission from the local military authority was not a mandatory requirement. The proposed site of the construction was beyond 10 metres and there was no prohibition in the guidelines dated October 21, 2016 with regard to construction beyond 10 metres, even with regard to height. The depot was enlisted under Part A of the Annexure.

22. According to Mr. Banerjee, the KMC issued the sanction as per the KMC Act and Rules. The proposed building plan submitted by the respondent nos. 5 complied with all the parameters prescribed by the relevant Act and Rules. All necessary documents with regard to title, possession etc. had been filed.

23. Reference was made to the order of the Bombay High Court, in the matter of ***Pralhad Gangaram Banswal And Ors. vs Defence Estate Officer Pune And Ors.*** (Writ Petition No- 15070 of 2017) decided on 13 August, 2018. He urged that the Bombay High Court had categorically observed that the distance beyond which development on private lands adjacent to the defence establishment was permitted, was 10 metres. In case of any construction within 10 metres, a NOC from the LMA, was required.

24. Learned government pleader submitted that the sanction of the building plan, was entirely within the domain of the KMC and the state respondents did not have a different opinion.

25. Mr. P. Chidambaram, learned Senior Counsel who appeared on behalf of the respondent no. 5 (owner of the premises No.34, Diamond Harbour Road) submitted that the guidelines dated May 18, 2011 was a policy framed by the Ministry of Defence, in order to deal with constructions which were to come up on private lands, situated within the vicinity of defence establishments. The said policy was amended by a circular dated March 18, 2015 and a proviso was added to paragraph 1(b) of the guidelines of 2011. By the said proviso, an exemption was made in case of those proposed constructions, for which, permission to construct had been issued

by the municipal authority, prior to May 18, 2011. The policy of 2011 was further amended by the circular dated November 17, 2015, and a second proviso was added to paragraph 1(b) of the circular dated May 18, 2011, by permitting construction of buildings having four storeys or more, within 500 metres, if they fell in line with or were in the shadow or shield of the existing high rises. The last policy was issued on October 21, 2016. The same was issued in consultation with the Chief of Army Staff, Chief of Air Staff and Chief of Naval staff, in order to grant further relaxations to the public.

26. According to Mr. Chidambaram, issuance of the said guidelines of 2016 was necessitated in view of the large number of representations which were received from elected representatives seeking review of the guidelines of 2011. As difficulties were being faced by the public in constructing buildings on their own lands, the Ministry was approached. According to the learned counsel, the amendment was the outcome of the demand for review of the 2011 guidelines, pending finalization of the amendment to the Works of Defence Act, 1903.

27. Mr. Chidambaram further submitted that the writ petition was based on an incorrect interpretation of the guidelines of 2016. The contentions of the petitioner were opposed to the policy decision of the Ministry of Defence.

He submitted that previously, the respondent No. 5 had abided by the guidelines dated May 18, 2011 and had applied for a NOC. Such NOC was not granted and the said respondents did not take any further steps with regard to the proposed construction. Only when the guidelines of October 21, 2016 had been published by the Ministry of Defence, Government of India and the policy had changed, the building plan was submitted by the respondent no.5. The same was sanctioned by the KMC. The application for sanction was made on September 14, 2017. Prior to that, the change in the guidelines had already been intimated to the Municipal Commissioner/KMC by the Colonel (Land) for General Officer Commanding Headquarters, Bengal Area, by a communication dated February 27, 2017.

28. It was further submitted that stacking fee of Rs. 22,31,122/- had been deposited with the Corporation. Mr. Chidambaram, urged that according to the circular dated October 21 2016, all constructions and repairs within the restricted zone of 10 metres from the outer wall of the defence establishment, in respect of 193 stations listed under part-A of the Annexure, were prohibited without prior NOC from the LMA. Beyond the distance of 10 metres, no further restrictions had been imposed. The provisions of paragraph 2(a) of the guidelines of 2016, completely altered paragraph 1(b) of the guidelines dated May 18, 2011.

29. Mr Chidambaram further submitted that no security restrictions with regard to the height of buildings had been prescribed, if such high rises were to come up beyond 10 metres from the outer wall of those 193 stations listed under Part-A of the Annexure to the said guidelines of 2016. Height restriction had been imposed in paragraph 2(b) of the guidelines of 2016, for constructions near 149 stations, listed under Part-B of the Annexure. In respect of those stations, restrictions had been imposed upto a distance of 100 metres from the outer wall of the defence establishment or installation. No repair or construction activity was permitted within 50 metres. A height restriction of 3 metres (1storey) had been imposed for construction between 50 metres to 100 metres, and any construction or repair activity within such restricted zone between 50 metres to 100 metres, would require a NOC from the local military authority.

30. According to Mr. Chidambaram, the guidelines of 2011 was altered after review of the prevailing restrictions, in order to remove the difficulties which were being faced by the public while constructing buildings on their own private lands. He submitted that both the circulars could not co-exist. If the circulars were interpreted as supplementary to each other, the amendments carried out would not convey any meaning and the objects and reasons for such amendment, would be completely meaningless.

31. Mr. Chidambaram next submitted that it was an admitted position that the building was situated at a distance of 14 metres from the defence establishment. He placed reliance on the decisions of the Bombay, Kerala and Delhi High Courts. All these High Courts had held that the mandatory distance within which no construction/repair could be permitted from the outer wall of the defence establishments listed under Part-A, was 10 metres and height restrictions were limited only in case of stations falling under Part-B. Learned senior counsel submitted that the Ministry of Defence had issued the guidelines of 2016 and the petitioner and the LMA were duty bound to abide by them. It was not open for an individual officer to interpret the said guidelines, to suit his purpose. When the ministry had itself granted relaxation from the restrictions imposed by the earlier circulars it was not permissible for the LMA to deviate from the circular dated October 21, 2016. On this proposition, he relied on the decision of ***Sea Kunal Corporation Private Ltd. vs The Municipal Corporation Of Greater Mumbai*** rendered in Writ Petition no. 3217 of 2018, decided on 27 February, 2019.

32. Learned Counsel submitted that the parts of the 2011 guidelines which were not amended were with regard to the process of granting the NOC and the designated authority, competent to issue such NOC. Paragraph 1(b) of the guidelines 2011, was totally substituted by the guidelines dated October 21, 2016, and the restrictions were categorized station wise, as per the list under Part-A and Part-B of the Annexure to the said 2016 guidelines.

33. Mr. Chidambaram further submitted that the authorities were estopped from going back on the relaxations conveyed by the guidelines of 2016, which had created a legitimate expectation in the minds of the respondent Nos. 5 and 6 and also in the minds of those persons who had booked flats in the proposed building. The writ petition was filed after 19 floors had come up. He urged that the doctrine of promissory estoppel should be applied, and objection of the LMA, must be negated. On these propositions, he relied on the following decisions:-

(a) *State of Punjab v. Nestle India Ltd.*, reported in (2004) 6 SCC 465,

(b) *S.V.A. Steel Re-Rolling Mills Ltd. v. State of Kerala*, reported in (2014) 4 SCC 186,

(c) *Devi Multiplex and Another v. State of Gujarat*, reported in (2015) 9 SCC 132,

(d) *Lalaram and Others v. Jaipur Development Authority and Another*, reported in (2016) 11 SCC 31,

(e) *Manohar Lal Sharma v. Union of India and Others*, reported in 2021 SCC OnLine SC 985,

34. Mr. Anindya Kumar Mitra, learned Senior Counsel who appeared on behalf of the respondent no. 6, submitted that the petitioner did not have any locus to initiate the instant proceedings. There was nothing on record to show that either the Army Headquarters or the Ministry of Defence had authorized the petitioner to file the writ petition. The writ petition did not disclose that it had been filed on their behalf. He next submitted that the Ministry of Defence, upon consultation with the Chiefs of Army, Navy and Air force, had issued the amended policy on October 21, 2016. The Court could neither interpret something beyond the policy nor impute its own knowledge, by analyzing the threat perception. The threat perception as assessed by the Ministry of Defence was final and the writ court could not go beyond such guidelines. He further submitted that the Union of India had also stated in their affidavit that the guidelines of 2016 was an amendment to the original circular of 2011.

35. According to Mr. Mitra, KMC had followed the policy, and had granted the sanction in compliance with the guidelines of 2016 issued by the Ministry of Defence. The LMA could not go against their own policy and agitate such points which were not germane for discussion, in view of the complete substitution of the provisions of paragraph 1(b) of the guidelines dated 2011.

36. Mr. Mitra also submitted that in respect of 193 stations under Part - A of the Annexure, no construction/repair was permitted within 10 metres, without a prior NOC, but beyond 10 metres, there were no restrictions. The height restrictions were confined to constructions near 149 stations under Part-B of the Annexure, as those were more sensitive zones, situated in the border areas. In such cases, construction upto one storey (3 metres height) was permitted within 50 to 100 metres with NOC. No construction or repairing between 50 to 100 metres could be undertaken without a NOC. Beyond 100 metres, there was no restriction at all. He relied on the following decisions:-

(a) *Union of India v. GNCT of Delhi and Others*, reported in 2019 SCC OnLine Del 6477, of the Delhi High Court,

(b) *M.P.Hassan Kunhi vs Union of India*, decided on WP(C).No. 9798 of 2013, of the Kerala High Court.

37. According to Mr. Mitra, although right to property ceased to be a fundamental right, but such right has been recognized as a legal right and also as a human right. In furtherance of such recognition, the Ministry of Defence had decided to grant further relaxations to private persons who proposed to construct buildings including high rises on their own lands, situated within the vicinity of defence establishments. Mr. Mitra submitted that the guidelines of 2016 must be strictly construed and a few lines from

the earlier restrictions could not be imported into the guidelines of 2016, in order to suit the whim of the LMA. He urged that the Court should not go beyond the guidelines of 2016.

(a) *Dev Sharan and Others v. State of U.P. and Others*, reported in (2011) 4 SCC 769

(b) *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and Others*, reported in (2003) 5 SCC 622

38. Upon hearing the learned counsels for the respective parties, the questions to be answered by the court are as follows:-

- (a) Whether the petitioner has made out a case for cancellation and/or revocation of the building permit, issued by the KMC.
- (b) Whether the guidelines of October 21, 2016 permitted construction of a G+40 storeyed building at premises no. 34Diamond Harbour Road.
- (c) What was the effect of the guidelines dated October 21, 2016?
- (d) Whether paragraph 1(b) of the guidelines dated May 18, 2011 could co-exist with the guidelines dated October 21, 2016.

39. To answer the first question, certain provisions of the KMC Act, have to be considered. Section 393 prescribes that every person who intends to erect a building shall apply for sanction by giving a notice in writing of his intention to the Municipal Commissioner, in the prescribed form, along with

the fees, including drainage development fee and also furnish such information, as may be prescribed by Rules.

40. Section 396 of the KMC Act deals with provisions for grant of, or refusal of sanction. The provisions are quoted below:-

“396. Sanction or provisional sanction or refusal of building or work.- (1) The Municipal Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub-section (2) or sub-section (3) of this section or the provisions of section 405 or section 406 :

Provided that no such sanction shall be accorded without the prior approval of the Mayor-in-Council in case of any building, except a residential building, proposed to be erected or re-erected on a plot of [500 square metres or less of land, or a heritage building :]

Provided further that the Mayor-in-Council shall consider the recommendations of the Municipal Building Committee [and those of the Heritage Conservation Committee] and shall finalize its decision after such consideration.

(2) The sanction of a building or a work may be refused on the following grounds :

- (a) that the building or the work or the use of the site for the building or the work or any of the particulars comprised in the site plan, ground plan, elevation, section or specification would contravene the provisions of this Act or the rules and the regulations made thereunder or of any other law in force for the time being;
- (b) that the notice for sanction does not contain the particulars or is not prepared in the manner required under the rules and the regulations made in this behalf;
- (c) that any information or document required by the Municipal Commissioner under this Act or the rules or the regulations made thereunder has not been duly furnished;
- (d) that in cases requiring a layout plan under section 364 or section 365 such layout plan has not been sanctioned in accordance with the provisions of this Act; ,
- (e) that the building or the work would be an encroachment or Government land or land vested in the Corporation;
- (f) that the site of the building or the work does not abut on a street or projected street and that there is no access to such building or

work from any such street by any passage or pathway appertaining to such site.

(3) If, for the use of a building, a licence or permission is required from any department of Government or statutory body under any law in force for the time being, and if such licence or permission is not immediately available, a provisional sanction shall be given for the erection of such building and upon the production of such licence or permission and submission of duly authenticated copies thereof, sanction under sub-section (1) shall be given :

Provided that the provisional sanction shall be subject to all other provisions of this Chapter.

(4) The Municipal Commissioner shall communicate the sanction or the provisional sanction to the person who has given the notice under section 393 or section 394; and where he refuses sanction or provisional sanction either on any of the grounds specified in sub-section (2) or under section 405 or section 406; he shall record a brief statement of his reasons for such refusal and shall communicate the refusal along with the reasons therefor to the person who has given the notice.

(5) The sanction or the provisional sanction or the refusal to the erection of a building or the execution of a work shall be communicated in such manner as may be specified in the rules and the regulations made in this behalf and, in the case of sanction or provisional sanction to the erection of a building, the occupancy or use group shall be specifically stated in such sanction.

(6) Notwithstanding anything contained in the foregoing provisions of this section, section or refusal of sanction of building plan submitted through on-line under section 393A shall be communicated through on-line in such manner and in such form as may be prescribed.”

41. Rule 3 of the Kolkata Municipal Corporation Building Rules, 2009

(hereinafter referred to as the said Rules) provides that no person shall erect a new building, or re-erect, or make addition or alteration to any building, or cause the same to be done, without obtaining a sanction in the form of a

Building Permit from the Municipal Commissioner. The procedure for grant of sanction has been provided under Chapter III of the said Rules.

42. Rule 4 of the said Rules prescribes that every person who intends to erect a new building on any site whether previously built upon or not or re-erect or make addition to, or alteration of any building, shall apply for sanction by giving notice in writing to the Municipal Commissioner. Notice for erection or re-erection or addition or alteration, shall be in the form as specified in schedule I. Rule 4(3) prescribes that the notice must be accompanied by copies of documents showing that the applicant had exclusive right to erect, re-erect or alter any building or portion thereof, upon the land.

43. If the applicant applies in the prescribed form and complies with the provisions of Rule 4 and satisfies the authority about the compliances, a building permit must be granted. Such permission can be refused only on the grounds as provided under Section 396(2) of the KMC Act, read with Rule 16 of the said Rules. Rule 7 prescribes the information/technical specifications, which must be available in the building plans and in the drawings. Specifications with regard to the size of the drawing sheet, dimensions etc. have been provided under Rules 8 to 12 of the said Rules.

44. Mr. Achinta Kumar Banerjee learned counsel for the KMC had categorically stated that respondent No. 5 had complied with the rules and provisions of statute when the application was made for issuance of the building permit. Thus the sanction was granted on September 25, 2017.

The ground for cancellation of sanction has been provided under Section 397 of the KMC Act. The provision states as follows:

“397. Sanction or provisional sanction accorded under misrepresentation.- If, at any time after the communication of sanction or provisional sanction to the erection of any building or the execution of any work, the Municipal Commissioner is satisfied that such sanction or provisional sanction was accorded in consequence of any material misrepresentation or any fraudulent statement in the notice given or information furnished under section 393 or section 394 or section 395, he may, by order in writing, cancel, for reasons to be recorded, such sanction or provisional sanction, and any building or any work commenced, erected or executed shall be deemed to have been commenced, erected or executed without such sanction and shall be dealt with under the provisions of this Chapter Provided that before making any such order, the Municipal Commissioner shall give a reasonable opportunity to the person affected as to why such order should not be made.”

45. Only, if a person obtains a sanction by practising fraud or through material misrepresentation of the information to be furnished as per the Rules, the Municipal Commissioner can cancel the building permit. It has been urged by the respondent nos. 5 and 6 and by the KMC that the respondent no. 5 had complied with all necessary formalities for grant of sanction as per Section 396 of the said Act. Upon such compliance, KMC

granted the sanction and there was no scope for refusal of sanction or cancellation of the same. The LMA by a communication dated February 27, 2017 intimated the Corporation about the change in the policy and issuance of the guidelines dated October 21, 2016. The contents of the same are quoted below:-

Tele 2222-6126
001927/R/Q3

Headquarters Bengal Area
246, AJC Bose Road
Alipore, Kolkata – 700 027.

27 February 2017

Mr. Khalil Ahmed, IAS
Municipal Commissioner
Kolkata Municipal Corporation
5, S. N. Banerjee Road, Kolkata – 700 013.

The Chairman
Bidhannagar Municipality
Poura Bhavan, FD-415A
Salt Lake, Kolkata – 106.

The Chairman
Baranagar Municipality
87, Deshabandhu Road (East), Kolkata – 35.

The Chairman
Kamarhati Municipality
(Dakhineswar Temple), Rathtala,
1, Feeder Road, Belgharia, Kolkata – 56.

Office of the Municipal Councillors
South Dum Dum, Municipality
Nagar Bazaar, Dum-Dum Road, Kolkata – 74

Bhatpara Municipality
1/1 West Ghoshpara Road
PO-24 PGN (N), Kankinara, WB(PIN-743126)

Barrackpore Municipality
BT Road, Post Office Talpukur, Kolkata - 120

Kanchrapara Municipality
 Netaji Subhash Path
 Kanchrapara, Loco, Kanchrapara, WB, Pin –
 743145.

GUIDELINES FOR ISSUES OF NO OBJECTION CERTIFICATE (NOC) FOR
 BUILDING/CONSTRUCTIONS

Dear Sir,

1. A copy of Ministry of Defence guideline letter No F.11026/2/2011/D (Lands) dated 21 Oct 2016 is enclosed herewith along with its enclosures.
2. You are requested to adhere to the above mentioned guidelines and approve the building construction/plan keeping in view the sensitivity of the nearest defence establishments.
3. For information and necessary action please.

Yours faithfully

(Birendra Kumar)
 Colonel
 Colonel (Land)
 For General Officer Commanding

Enclosure: As above

Copy to:-

Stn HQ Barrackpore
 Stn HQ Kanchrapara
 Stn HQ Kankinara
 Stn HQ Kolkata

46. It is nobody's case that the sanction/building permit was obtained by practising fraud or through material misrepresentation. As such, the Corporation cannot be directed to cancel the building permit. Cancellation of sanction and/or refusal to grant sanction are guided by the Act and Rules. The KMC cannot be directed to act beyond the provisions of law. The prayer for a direction upon the Corporation to set aside rescind, recall and cancel

the plan issued by it, cannot be allowed in view of the specific contention of the Corporation that the plan was issued as per law and the respondent No. 5 had followed the Act and Rules.

47. The other questions which have been framed hereinabove, are taken up together. There is no dispute with the proposition that national security must not be compromised and the Court cannot evaluate the same. It is best left to the LMA and the Government. In this context, it is pertinent to mention that unlike some other municipal laws in other states, the KMC Act does not provide that a NOC, must be obtained from the LMA, before a building permit is granted for a proposed construction, within the vicinity of a defence establishment. Guidelines have been framed from time to time by the Ministry of Defence, in consultation with the Chief of Army Staff, Chief of Air Force Staff and Chief of Naval Staff which impose certain restrictions, which are to be followed while considering the applications for grant of building permits by the local municipal authority. Such guidelines, in essence, have been attempts at balancing private rights of individuals with the need for preservation of security and safety of defence installations.

48. In this context, the relevant guidelines are of May 18, 2011, March 18, 2015, November 17, 2015 and October 21, 2016. By and large, these are the

four guidelines which constitute the policy of the Ministry of Defence with regard to security restrictions for construction in close proximity to defence establishments. The embargos and/or restrictions in these guidelines had to be considered and implemented by the KMC, while considering the application for sanction of the building plan which had been submitted by the respondent no. 5, for the proposed G+40 storeyed building, at premises number 34 Diamond Harbour Road.

49. The guidelines of May 18, 2011, was primarily issued to address and avoid the controversy which had arisen in two cases, namely, Sukna and Adarsh. Various issues involved in the two cases were reviewed and the matter was considered by the government in detail, in consultation with the services. It was felt that the Works of Defence Act, 1903 which had imposed certain restrictions upon the use and enjoyment of lands in the vicinity of the defence establishments, needed to be comprehensively amended. While the amendment was in process and would take some time, the Government of India decided to issue instructions in the interim, to regulate the grant of NOC in respect of constructions on lands adjacent to defence establishments. The objective behind such instruction, was to strike a balance between the security concerns and the right of the public to

undertake construction activity on their own lands. Accordingly, a guideline was laid down on May 18, 2011.

50. In the 2011 guidelines, a distinction was made between two situations. One such situation was when the local municipal laws required consultation with the station commander before a building plan was approved, the station commander had the liberty to convey his views after seeking approval from the next higher authority, not below the rank of a brigadier or equivalent. The municipal authority was bound to obtain the views of the LMA and abide by the same, in such cases.

51. Such objections/views with regard to the NOC, were to be conveyed by the station commander only to the State Government agencies or to the municipal authorities and under no circumstances to the builders or the private party. The KMC Act is not covered by such a situation.

52. The second situation was of cases where the municipal laws did not require consultation with the station commander. For such cases, if the station commander felt that any construction coming up within 100 metres or a multi storeyed building of four or more storeys coming up within 500 metres from the outer wall of the defence establishment, posed to be a security hazard, he could refer the matter to the next higher authority in the

chain of command. In case the next higher authority was also of the same view, the station commander could convey his objection/views to the local municipality authority or the State Government agencies. In case of an objection, the matter would be taken up by the higher authority, if needed, through the Army Headquarters or through the Ministry of Defence.

53. Based on paragraph 1(b) of the guidelines of 2011, the respondent no. 5 filed a representation before the General Officer Commander, Bengal Area and prayed for necessary clearance. The KMC sought for the views of the LMA on the security implications and forwarded the drawing of the proposed building. The LMA, by a letter dated March 31, 2015 communicated its refusal to grant NOC in view of the close proximity of the proposed building to the depot. The proposed multi storeyed building was at a distance of 14 metres from the defence establishment. The minimum distance to be maintained was 100 metres. The refusal was based on the restrictions imposed by paragraph 1(b) of the guidelines of 2011.

54. The respondent no.5 respected such decision and did not take any steps to obtain a sanction from the Corporation at the relevant point of time.

55. Two provisos were introduced by amendments to paragraph 1(b) of the guidelines of 2011. Circulars dated March 18, 2015 and November 17, 2015

were issued. By the first amendment of March 18, 2015, constructions for which permission had been issued by the competent local municipal authority, prior to May 18, 2011, were exempted from the security restrictions imposed by the guidelines of 2011.

56. The amendment dated November 17, 2018 added a second proviso to paragraph 1(b) of the 2011 guidelines. Proposed constructions of four storeys or more, which were behind the shadow or the shield of an existing four storeyed or a higher building, were exempted, even if they were within 500 metres from the outer wall of the defence establishment.

57. These two amendments do not have any relevance in this case. This is neither a case of grant of permission prior to May 18, 2011 nor a case of construction of a building behind the shadow line or the shield of an existing high-rise, within 500 metres.

58. Thereafter, the circular dated October 21, 2016 was issued, by the Ministry of Defence, Government of India, in consultation with the Chief of Army Staff, Chief of Air Force Staff and Chief of Naval Staff. The circular was issued upon consideration of several representations which had been received from elected representatives, for review of the guidelines dated May 18, 2011. Such review was necessary in view of the difficulties which

were being faced by the public in constructing buildings on their own land, pending finalization of the amendment to the Works of Defence Act, 1903. The government decided to amend the guidelines dated May 18, 2011 read with circular March 18, 2015 and November 17, 2015. Such amendment was brought about in consultation with the services as an amendment to the guidelines dated May 18, 2011.

The guideline states as follows:-

“2a) 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.”

59. Paragraph 2 of the said guidelines of 2016 provides the reasons for the amendment of the guidelines of 2011, the circular dated March 18, 2015 and November 17, 2015. The amendment was brought in after reviewing the

guidelines of 2011. The review of the guidelines of 2011, was necessary as a large number of representations were received from elected representatives about the serious difficulties the public was facing to build on their own lands.

60. Thus, the amendment was introduced in order to grant a further relaxation to the public at large. The guidelines of 2011, had been issued to strike a balance between the rights of the public to construct on their own land and the security hazards of defence establishments. The Ministry of Defence, Government of India wanted to grant further relaxations in recognition of the legal rights of the public to use and enjoy their own property. A humanitarian and/or a balanced approach was taken and lesser stringent security restrictions were imposed by substituting paragraph 1(b) of the earlier guidelines. The idea was to balance the public demand vis-a-vis the security issue. This time, two separate categories of defence stations were classified, upon assessment of the national security as per their strategic locations. 193 stations were listed under Part-A and 149 stations were listed under Part-B of the annexure to the guidelines of 2016.

61. Paragraph 2(a) of the circular of 2016, provides that constructions up to 10 metres from the outer wall of the defence establishment in order to

maintain a clear line for effective surveillance, is not permissible. Any construction or repair activity within such restricted zone would require a prior 'no objection certificate' from the local military/defence establishment.

62. Thus, the only restriction that has been imposed on constructions within the vicinity of the 193 defence establishment under Part A, is that no construction or repair activity within the restricted zone of 10 metres from the outer wall of the defence establishment can be done without a prior NOC from the local military authority. Paragraph 2(b) of the said guidelines of 2016 provides more stringent restrictions in case of constructions which are to come up within the proximity of those defence establishments listed under Part B. Such security restrictions are applicable up to a distance of 100 metres from the outer wall of such defence establishment/installation in order to maintain a clear line for effective surveillance. No construction or repair activity is permitted at all, within 50 metres. A further height restriction has been imposed and only a single storeyed construction (3 metres height) between 50 metres to 100 metres is permitted, but any construction or repair activity within the restricted zone between distances 50 to 100 metres, would require prior NOC from the LMA.

63. The construction which is going on is admittedly at a distance of 14 metres from the ordinance depot as per the observation of the LMA. The ordinance depot is listed under Part A at serial No. 73. The construction does not require a 'no objection' from the local military authority.

64. With regard to 149 stations under Part-B of the Annexure, security restrictions have been made applicable up to a distance of 100 metres from the outer wall of the defence establishment. Construction or repair activity is not permitted up to 50 metres. Height restriction of one storey has been imposed for constructions between 50 to 100 metres and all construction or repair activity within the restricted zone of 50 to 100 metres requires a prior NOC. The procedure for issuance of NOC remains the same, as in the guidelines of 2011.

65. Upon reading the 2016 guidelines as a whole, the intention of the Ministry of Defence, Government of India becomes clear. The guidelines have been issued as an amendment to the earlier ones. Several requests were received from the elected representatives of the government for further relaxation of the conditions imposed as a part of security restrictions in the guidelines dated May 18, 2011, with regard to both height and distance. On such request, the Ministry of Defence in consultation with the Chief of

Army, Navy and Air, decided to ease out the restrictions both with regard to height and distance of buildings proposed to be constructed on private lands, near defence installations. The defence installations have been categorized into two Parts, in order of their location, importance and security hazards. National security had been evaluated and assessed. The defence establishments which are in cities and urban areas, have been listed under Part A. Such areas are more populated. Stations under Part B fall under a different category. They are more strategically situated especially in the border areas and sensitive zones. Thus, more stringent conditions have been imposed in respect of constructions in the vicinity of the stations under Part B.

66. The process of the grant of NOC has remained the same as in the guidelines dated May 18, 2011.

67. The provision of paragraph 1(a) of the guidelines of 2011 has been retained in paragraph 3 of the guidelines of 2016 with minor changes in the languages which is quoted below:-

“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.”

68. Thus paragraph 1(a) and 1(b) of the 2011 guidelines read with the amendments of March 18, 2015 and November 17, 2015, have been substituted by the circular dated October 21, 2016. Circular dated October 21, 2016, is an amendment which has substituted the guidelines of 2011. The restrictions imposed by the 2011 guidelines have been deleted and new restrictions have been imposed. Those provisions of 2011 guidelines which were to be retained in the 2016 guidelines have been specifically mentioned under paragraphs 3 and 4, thereof. Being an administrative order, the operation of the 2016 circular, is prospective. The security restriction with regard to the constructions in close proximity to the 193 stations under Part-A is that a NOC would be required for any construction or repair activity within the restricted zone of 10 metres. No restriction with regard to the height of such buildings have been imposed. In respect of Part B stations, paragraph 2(b) of the 2016 guidelines imposes mandatory restriction up to 100 metres. Height restriction of a one storeyed building (3 metres) between 50 to 100 metres, has been imposed. Construction or repair activity between 50 to 100 metres would require a prior NOC. All types of constructions and/or repair activity have been prohibited within 50 metres. Beyond 100 metres, there are no restrictions.

69. The contention of the petitioner that the restriction upto three storeys within 500 metres continues, even after the guidelines of 2016 has been issued, cannot be accepted. First, the circular dated October 21, 2016 has been brought in to further relax the restrictions imposed by the guidelines dated May 18, 2011 and the amendments thereto. Grant of such relaxation was felt necessary in view of the representations received from the elected representatives to further alleviate the difficulties which were faced by the public at large in constructing upon their own land, pending finalisation of the amendment to the Works of Defence Act, 1903. Upon making the security assessment, the Ministry of Defence in consultation with the Chief of Army Staff, Chief of Air Staff and Chief of Naval Staff, classified the stations into two categories. Part-A and Part-B. Under Part-A of the Annexure, 193 stations have been listed. Construction/ repair within the restricted zone of 10 metres from the outer wall of the defence establishment/installation is permitted upon obtaining a prior NOC from the local military authority. Beyond 10 metres, there are no restrictions in respect of these stations. The construction in this case is at a distance of 14 metres from the defence establishment listed under Part A, as such, the construction is not in violation of the 2016 guidelines, and cannot be stopped by this court.

70. The interpretation of the petitioner that the height restriction upto three storeys upto a distance of 500 metres remains even in of respect of stations under Part-A, will create a conflicting situation. Separate class of height restrictions have been imposed in the 2011 and 2016 guidelines. They cannot co-exist. In respect of the stations listed under Part-B, a height restriction of one storey has been specified between 50 to 100 metres and all constructions and repair activities between 50 to 100 metres require a prior NOC. No construction has been permitted upto 50 metres. Whereas, in the guidelines of 2011, the restriction of three storeys upto 500 metres had been imposed. Thus in case of those defence establishments listed under Part B if the height restriction upto 3 storeys is made applicable even now, the total ban of any construction or repair activity upto 50 metres and only one storey between 50 to 100 metres becomes meaningless and stands negated. The argument of the petitioner of a height restriction of three storeys up to a distance of 500 metres, from the defence establishment in all cases, not only contradicts the present guidelines with regard to the height and distance but also renders the stricter restriction imposed upon assessment of national security in case of Part B stations, as nugatory.

71. A comparative analysis of the restrictions imposed by the two guidelines issued by the Ministry of Defence depicted below:-

18th May, 2011 guidelines	21st October, 2016 guidelines
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.	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.

72. The Ministry of Defence has issued its own guidelines with regard to the restrictions. It is the sole authority to decide such issue. Suggestions were taken from the three wings of defence and the earlier circulars were

amended. The petitioner is bound by the guidelines of 2016 and cannot take a contrary view.

73. The effect of amendment by substitution is that the old provision ceases to exist and the new provision is brought into existence in its place.

74. If the intention of the Ministry of Defence was to continue with the height restrictions of three storeys upto 500 metres, in that case, like the other provision of Paragraph 1(a) of 2011 circular which have been specifically incorporated in the circular dated October 21, 2016 under paragraphs 3 and 4 thereof, the said height restriction, would have also been incorporated. The intention of the Ministry of Defence was to substitute the entire circular dated May 18, 2011, along with the amendments and formulate new guidelines upon review of the entire issue, afresh. The object was to temper down the earlier restriction in order to enable the public to enjoy their property which were situated within close proximity of defence establishments. The guidelines of 2011 was reviewed on public demand.

75. The decision rendered in ***Ex-Armymen's Protection Services (Supra)*** cited by the UOI, on the proposition that national security is of paramount consideration and it is solely within the domain of Ministry of Defence to

assess the same, is not disputed. The Court agrees with such proposition of law. The court is of the view that the Ministry of Defence, Government of India, had assessed the security issues and had incorporated certain restrictions in the policy of October 21, 2016. The LMA cannot interpret the same in its own way, by reading further restrictions of height of three storeys for all constructions upto 500 metres, especially when stricter restrictions of no construction upto 50 metres and one storey between 50 to 100 metres have been imposed, in case of defence establishments listed under Part B.

76. This court can neither impute personal knowledge nor assess the security hazards, as rightly pointed out by Mr. Singhania. The matter is also pending before the Government of India for a further review of the circular dated October 21, 2016. The decision of this Court is restricted to the question whether any illegality has been committed by the KMC, in granting a building permit to the respondent no.5 and whether the sanction has been granted in violation of the security restrictions imposed by the Government. This court does not find that the KMC has failed to abide by the security guidelines as laid down by the Ministry of Defence, Government of India, in its circular dated October 21, 2016.

77. Moreover, by an order dated October 1, 2021, the Union of India was specifically directed to answer in its affidavit and clarify the position by giving its own interpretation of its guidelines.

78. The court does not find that the UOI has supported the contentions of the petitioner, in the affidavit. The relevant portions of the affidavit are quoted below:-

“7. That in the year 2016, Guidelines were once again amended by Ministry of Defence vide their notification ID 11026/2/2011/D (lands) dated 21st October 2016, which states as under.

".....Reference Circular of even number dated 18 May 2011 read with amendments issued vide Circulars of even number dated 18 Mar 2015 and 17 Nov 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 Mar 2011 read with Circulars dated 18 Mar 2015 and 17 Nov 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."

8. That the NOC Guidelines issued vide MOD Letter No. 11026/2/2011/D(Lands) dated 21.10.2016 are presently under review.”

79. The interpretation of the effect of the circular dated October 21, 2016 by the KMC and the respondent No. 5 & 6, is correct. However, the Ministry of Defence and the Government of India are always entitled to assess the security issue and further review the guidelines of 2016 and issue necessary directives. This court sitting in judicial review, cannot go beyond the contents of the policy/guidelines of 2016.

80. Admittedly, the circular dated October 21, 2016, is pending a review before the Ministry of Defence. The Works of Defence Act, 1903 is also under review. Any decision taken by the competent authority will prevail.

81. The decisions of the Kerala High Court, Bombay High Court and the Delhi High Court, do have a persuasive value. It has been stated in all the decisions that the mandatory restriction in respect of Part A is only upto 10 metres and no further restriction has been imposed by the circular dated October 21, 2016.

82. However, this Court for its own reasons, holds that the submissions of the petitioner of an existing height restriction of three storeys upto a distance of 500 metres from the outer wall of the defence establishments under Part A, is not a correct interpretation. The amending circular of 2016

substituted paragraphs 1(a) and 1(b) of the circular dated May 18, 2011. Height restriction has been imposed for buildings to be constructed within the vicinity of a separate class of defence stations which are mostly near the border areas and listed under Part B of the Annexure, to the guidelines of 2016. The KMC did not err in granting the building permit. Such action was not in violation of the security restrictions. The guidelines of 2016 will prevail and no injunction can be granted by this court, in respect of the construction. This is not a case where the municipal laws mandated consultation with the LMA, before grant of sanction. As such, KMC was not required to seek the observations of the LMA, on security implications under the guidelines of 2016.

83. Accordingly, the writ petition and the connected application are dismissed.

84. However, there will be no order as to costs.

85. Parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)