

11.05.2022

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S.B.

Calcutta High Court
In the Circuit Bench at Jalpaiguri

WPA 634 of 2022

Abhisikta Nirman Private Limited & Anr.

-vs-

Union of India & Ors.

Mr. Amalesh Roy
Mr. Deborshi Dhar
Mr. Shreyash Marodia ...for the petitioners

Mr. Sudipto Kumar Majumder, Ld. Asst.
Solicitor General
Mr. Ajoy Kumar Singhanian ...for the State

Affidavit of service filed on behalf of the
petitioners is taken on record.

In the present writ petition, challenge has been
thrown to an order dated 19th April, 2021 passed by
Colonel Col Land (North and East) being the
respondent no. 3 and subsequent order dated 31st
May, 2021 passed by S.S.O. A for Administrative
Commandant, Station Cell Bengdubi whereby the
application of the petitioners seeking 'No Objection
Certificate' (NOC) for constructing six storied
commercial-cum-residential building at Mouza
Rupsingh under lower Bagdogra Gram Panchayat,
Dist. Darjeeling, was spurned.

Mr. Amalesh Roy, learned advocate appearing on behalf of the petitioners submits that as per the guidelines of the defence authorities as contained in order dated 21st October, 2016 issued on behalf of the Ministry of Defence, Government of India for constructing building within 10 meters from the outer wall of defence establishments there is requirement of obtaining NOC from the concerned defence authorities and it is submitted on behalf of the petitioners that the land situates at Bengdubi, Dist. Darjeeling which is within 193 stations as specified under Part-A to the said order dated 21st October, 2016.

It has further been contended that petitioners applied for such NOC which has been rejected vide impugned order dated 19th April, 2021 and 31st May, 2021 without assigning any reasons. Therefore, petitioners pray for cancellation of these two orders.

Mr. Sudipto Majumdar, learned Assistant Solicitor General appears on behalf of the defence authorities and has defended the decisions taken by the authorities vide orders dated 19th April, 2021 and 31st May, 2021.

This court has heard the submissions made on behalf of the parties to this writ petition and perused the relevant materials available on record.

On perusal of the orders dated 19th April, 2021 and 31st May, 2021 issued by the concerned defence

authorities it appears that those orders are cryptic and bereft of any reasons. On what basis the application of the petitioners seeking NOC for construction of building has been turned down has not been elaborately dealt with on the anvil of the relevant guidelines or norms. While taking such decisions the concerned respondent authorities are required to apply their mind which has not been done in the present case.

Accordingly, the impugned orders dated 19th April, 2021 and 31st May, 2021 issued by the respondent authorities stand set aside. The issue is remanded to the concerned defence authorities for taking fresh decision within a period of six weeks from the date of communication of this order after granting opportunity of hearing to the writ petitioners or their representative. Such decision to be taken by the concerned defence authorities shall be communicated to the petitioners within one week thereafter.

However, it has been made clear that if the application of the petitioners seeking NOC is refused, the concerned defence authorities are required to assign adequate reasons in support of the same.

With the above direction, this writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Saugata Bhattacharyya, J.)