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NEUTRAL CITATION NO: 2022/DHC/003446



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

Order reserved on : 06.05.2022

Order pronounced on : 31.08.2022

+ **LPA 693/2019, C.M. No. 48090/2019**

1. Union of India
Through Commandant
Ordnance Depot, Shakurbasti,
New Delhi-110056 Petitioner
Through: Ms. Aakanksha Kaul, Mr. Manesh
Singh and Mr. Aman Sahani, Advs
versus

1. Government of NCT Delhi
Through Secretary
Land and Building Department
C-Block, Vikas Bhawan, New Delhi-110002

2. North Delhi Municipal Corporation
Through The Commissioner
Dr. S.P.M. Civic Centre
JLN Marg, New Delhi-110002

3. Executive Engineer Building (HQ)-1
8" Floor, E-1 Wing,
Dr. S.P.M Civic Centre
JEN Marg, New Delhi-110002

4. Dr. Naryan Dutt Shrimali Foundation
International Charitable Tmst Society
Through its Secretary
Regd Off 823, DEE Tower A,
Jasola District Centre, New Delhi-110025

Also at

Charitable Hospital Complex at Site No. 2,
Zone H-4/5, Facility Centre,
Pitampura, Delhi-110 034

..... Respondents

Through: Mr. Rajneesh Sharma, Adv.for R1
Mr. Ajay Kumar, Adv.for R4.

+ **LPA 697/2019, C.M. No. 48108/2019**

1. Union of India

Through Commandant
Ordnance Depot, Shakurbasti,
New Delhi-110056

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CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J :

C.M.No. 48089/2019 in LPA No. 693/2019 &
C.M.No. 48106/2019 in LPA No. 697/2019

(i) Vide these applications under section 5 of the Limitation Act read with section 151 of the Code of Civil Procedure, condonation of delay of

247 days in filing of the present appeals has been sought. It is submitted that the delay occurred due to administrative reasons i.e. the file had to be put up at various levels.



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(ii) For the reasons stated in the applications, delay is condoned. Applications are disposed of accordingly.

LPA 693/2019

LPA 697/2019

1.0 Both the above appeals are preferred by the appellant Union of India ('UOI' in short) under Clause 10 of the Letters Patent (as applicable to the Delhi High Court), assailing the common judgment dated 11.01.2019 passed by the Ld. Single Judge ('**impugned judgment**' in short), whereby :

- (i) **the Writ Petition bearing No. 6901/2017 filed by Union of India, the appellant herein** *inter alia* seeking directions for quashing of sanction accorded to Dr.Naryan Dutt Shrimali Foundation ("**NDSF**" in short)/the respondent no. 4 herein, for construction of building to house a hospital at site no. 2, Zone H-4/5, Facility Center, Pitampura, Delhi-110034 ("**the site**" in short), **was dismissed**; and
- (ii) **the writ petition filed by NDSF/the respondent no. 4 herein bearing WP (C) 9883 of 2017, was allowed** declaring that the Commandant/ appellant herein could not insist on obtaining of NOC from defence establishment, by the respondent no. 4 herein for the said construction.

2.0 Vide **LPA No. 693/2019**, the appellant/Union of India has challenged the impugned judgment allowing WP(C) 9883/2017, filed by the respondent no. 4 herein.



2.1 Vide **LPA No. 697/2019**, the appellant/Union of India has challenged the impugned judgment dismissing the appellant's WP(C) No. 6901/2017.

3.0 At the outset, the facts relevant for disposal of the present appeals are extracted hereunder :

- (i) NDSF/respondent no. 4 herein was allotted the site in the year 1996 to establish a charitable hospital for the benefit of public in Delhi. The NDSF/respondent no. 4 initially got sanctioned a building plan with 100 FAR with height of 33.5 meters vide letter dated 08.07.2013. NOC and permission for the project from Airport Authority of India (**AAI**) (w.r.t. height of the project vide letter dated 13.06.2012), Delhi Urban Arts Council (**DUAC**) and Chief Fire Officer, were obtained;
- (ii) subsequently, pursuant to notification dated 23.09.2013, Ministry of Urban Development notifying increase in FAR from 100 to 375 for hospital land (plot of more than 2.5 hectares) in Delhi, NDSF/respondent no.4 applied for sanction of the revised building plan vide application dated 08.10.2015 for the height of 45 meters and FAR 150 meters (and 70 meter). During the course of arguments, Ld. counsel for the respondent no. 4/NDSF submitted that NDSF was willing to construct the hospital as per initial sanction plan i.e. 100 FAR with height of 33.5 meters;
- (iii) **the appellant herein raised objection**, vide letters dated 10.12.2016 and 06.01.2017, that the sanction to the respondent no. 4 for construction of building/hospital was accorded by

North DMC without any information to the military authorities

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and that the **said building/hospital was coming up at a distance of approximately 50 meters from vital Army establishment** i.e. Ordnance Depot, Shakur Basti, located in A-1, Defence Land, which will be a security concern; and the No Objection Certificate (“**NOC**” in short) could not have been given;

- (iv) vide letter dated 10.12.2016, the appellant informed North DMC that in terms of para (1)(b) of Ministry of Defence, Government of India letter dated 18.05.2011, NOC cannot be given by the Station Commandant Delhi, for construction of hospital by NDSF/respondent no. 4, in the vicinity of Ordnance Depot, Shakur Basti;
- (v) thereafter, North DMC vide letter dated 26.12.2016 requested the respondent no. 4 to obtain NOC from defence establishment/comply with directions issued by the Station Commander vide letter dated 10.12.2016;
- (vi) NDSF/respondent no. 4 vide its letter dated 29.12.2016 informed North DMC that Ministry of Defence vide its letter dated 21.10.2016 has issued new guidelines with respect to prior “No Objection Certificate” from Local Military Authority (**LMA**)/Defence Establishment (**DE**), where the construction of proposed building was within 10 meters from the outer wall of defence establishment/installation. NDSF/respondent no. 4 further submitted that their site is 100 meters away from the boundary of Ordnance Depot, Shakur Basti and the main approach road is 45 meters in front of building’s boundary wall, hence, no NOC was required by them; thereafter,

correspondence was exchanged between North DMC & the
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appellant and the respondent no. 4 & the appellant;



- (vii) the Station Commander vide his letter dated 10.02.2017 denied the NOC with the remarks that the hospital building even upto the height of 45 meters will be a security hazard for the Depot and therefore, NOC for such construction at the Site cannot be given;
- (viii) in view of the above, both, the appellant as well as the respondent no. 4 herein, filed aforesaid writ petitions bearing nos. 6901/2017 & 9883/207, respectively;
- (ix) (a) the Appellant vide its petition, *inter alia*, prayed that the sanction accorded to the NDSF/respondent no. 4 for construction of a high rise building at the Site be quashed and that the respondents no. 1 to 3 be directed to restrain the respondent no. 4 from constructing a high rise building at the Site;
(b) the respondent no. 4 vide its writ petition, *inter alia*, stated that the respondent no. 2 sanctioned its revised building plan without compelling it to obtain NOC from the appellant; and that the respondent no. 4 is not required to obtain NOC, in terms of the 2016 Guidelines;
- (x) Vide common judgment, the appellant's writ petition bearing no. 6901/2017 was dismissed and the respondent no. 4's writ petition bearing No. 9883/2017 was allowed, as already detailed in para 1.0 above.

4.0 It is this judgment, which has been now challenged by the appellant UOI vide present appeals.

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5.0 Vide both the above appeals, the appellant has raised similar contentions; and the impugned judgment has been challenged mainly on the grounds that the Ld. Single Judge failed to appreciate that :

- (i) 2016 guidelines only revisited 2011 guidelines to the extent of horizontal distance of the proposed construction and imposed certain restrictions in that respect; 2016 guidelines do not deal with the height restrictions and to that extent, the 2011 guidelines will continue to remain applicable;
- (ii) 2016 guidelines were not intended to supersede 2011 guidelines (which is evident from letter dated 18.10.2018); and that the 2011 guidelines along with 2015 amendment are fully attracted in the present case;
- (iii) both 2016 guidelines and 2011 guidelines have to be read harmoniously, keeping in mind the real objective i.e. safety and security of military establishments in close vicinity of high rise buildings;
- (iv) **distance between the boundary wall of the Ordnance Depot and the hospital site is merely 47.06 meters** and the proposed height is about 70 meters/consisting of 10 floors. In view of which, the said construction will perennially endanger the safety and security of the military establishment/Ordnance depot;
- (v) NOC from the LMA was not obtained by the respondent no. 4 in terms of 2011 guidelines, when the sanction was granted to it

in the year 2013;

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- (vi) as far as the construction of Hotel LA is concerned, the appellant had objected to its construction.

6.0 On the other hand, Ld. counsel for the respondent no. 4 sought dismissal of these appeals pleading that there is no error in the impugned judgment passed by Ld. Single Judge. He submitted that the Ld. Single Judge after duly appreciating the matter, rightly noted that vide guidelines dated 21.10.2016, Ministry of Defence (“**MOD**” in short), Government of India had amended the guidelines replacing the old guidelines under circulars dated 18.05.2011, 18.03.2015 and 17.11.2015.

6.1 Ld. counsel for the respondent no. 4 further argued that as per the appellant’s own admission, the proposed hospital of the respondent no. 4 under construction at site, is at a distance of more than 45 meters from the outer wall of its Ordnance Depot, Shakur Basti, which falls in Part A of the Annexure to the Circular dated 21.10.2016. Thus, the findings of the Ld. Single Judge that the Clause 2(a) of 2016 guidelines only stipulates a restriction of 10 meters with regard to the installation in question and therefore, the construction of a building above 04 storeys beyond 10 meters is permissible; and no prior NOC from LMA/DE was required by the respondent no. 4 herein, can not be faulted.

6.2 Ld. counsel for the respondent no. 4 also argued that the fact that in guidelines dated 21.10.2016 in Clause 2 (b), the MOD has specifically mentioned the height restriction of 03 meters with respect to the DE/installations located at 149 stations as listed in Part B of the Annexure to the said circular. Had the MOD intended to put such height restriction

with respect to the properties to be constructed in the vicinity of 19.
stations, as detailed in Part A of the Annexure to the said Circular, MOD
would have clearly spelt out the same.



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6.3 Ld. Counsel for the respondent also referred to and relied upon the order of the Hon'ble Supreme Court dated 28.11.2018 in Civil Appeal No. 4746/2017, whereby the Apex Court after considering the aforesaid guidelines dated 21.10.2016 issued by MOD, observed that as far as the construction is beyond 10 meters of the outer wall of the military compound, there cannot be any objection by the military authorities to such construction coming up in accordance with the law. Ld. counsel submitted that the said lease involved construction of 11 storeyed building of hotel Radisson Blue at a distance of more than 10 meters from the outer wall of the Military Establishment. He also submitted that the hotel building was constructed much closer to the Military Establishment, than the present hospital.

7.0 We have duly considered the submissions made by both the sides.

8.0 In order to appreciate the rival contentions, which primarily hinge on the interpretation of the guidelines dated 21.10.2016 in light of the earlier guidelines, it would be apposite to refer to the said guidelines:

8.1 The guidelines dated 18.05.2011 read as under :

“
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'.

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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

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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 works of Defence Act ISG3. etc. in such cases provisions of the concerned (Notification) will continue to prevail.”

8.2 After issuance of the above guidelines, various representations were received regarding restrictions placed thereby. Pursuant thereto, the guidelines were reviewed and modified vide guidelines dated 18.03.2015 and 17.11.2015 and provisos one and two to para 1(b) of the aforesaid guidelines respectively, came to be added. The guidelines dated 18th March 2015 and 17th March 2015 read as under :

“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
NEUTRAL CITATION NO: 2022/DHC/003446
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."

" New Delhi, *dated 17th November, 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'- regarding.

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. Consequent to



representations/references received with regard to restrictions place by these guidelines/structures already exist within 500 metres of the periphery, it has been decided to issue following amendments to guidelines by adding a second proviso under para 1(b) of Circular of even number dated 18.05.2011 as follows:

“Whenever buildings/structures of four storeys of more already exist within 500 metres of the periphery of any Defence establishment and the construction proposed is in line with or behind i.e. in the shallow or shield of such building/structure, the State Government/Municipal Corporation may, after obtaining comments from the LMA and giving due consideration to the same, decide whether to approve such proposals or not. LMA shall give his comments, within a period of 30 days from the date of receipt of a reference from the State government/Municipal Corporation. This order will be implemented prospectively.”

2. *In respect of proposals for construction between the boundary of the Defence establishments and the existing structure as indicated above and within 500 metres of the Defence establishments, the guidelines contained in Circular dated 18.05.2011 with regard to NOC from the LMA shall continue to apply. Other provisions of the circular dated 18.05.2011 and 18.03.2015 will also remain unchanged.*

सत्यमेव जयते

*(Surya Prakash)
Director (L&C)”*

8.3 Subsequently, pursuant to receipt of further representations, guidelines dated 18th May 2011, were amended vide guidelines dated 21.10.2016, which are reproduced hereunder:

“

New Delhi, dated 21st October, 2016

To

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

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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.”

9.0 From the careful reading of the above guidelines, it is evident that Clause (b) of guidelines dated 18.05.2011 stipulated that any construction coming up **within 100 meters** (for multi-storey building of **more than 04 storeyes, the distance shall be 500 mtrs**) **required NOC from the Station Commander.** Meaning thereby, that any multi-storey building exceeding 04 storeyes coming up within the distance of 500 meters of a DE, would require NOC from the Station Commander.

9.1 However, Clause 2(a) of subsequent guidelines dated 21.10.2016 (whereby the earlier guidelines dated 11th May 2011 were amended) required that as far as defence establishment/installations located at 193 stations, as listed in Part A of the Annexure to the said circular, (which includes Ordnance Depot, Shakur Basti as involved in the instant case) are concerned, for any construction or repair activity within 10 meters, prior NOC from the LMA/DE would be required. No restriction as to

height of the building under construction was stipulated in this Clause

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Whereas, with respect to any construction in the vicinity/within distance as stipulated in Clause 2(b) of defence establishments as appearing in Part B, a height restriction was stipulated. The site, on which the proposed hospital by the respondent no. 4 is under construction, is near defence establishment which is covered in Part A of the Annexure to the 2016 circular and is therefore, governed by Clause 2 (a).

9.2 It is the appellant's contention that the height restriction already stipulated in earlier guidelines dated 18.05.2011 would have to be read in this regard pleading that the said guidelines were still in vogue; and that 2016 guidelines were not intended to supersede 2011 guidelines. He also argued that both, 2011 guidelines and 2016 guidelines have to be read together and harmoniously keeping in mind the objective thereof i.e. the safety and security of military establishments in close vicinity of high rise buildings.

9.3 In this respect, suffice it to state that plain reading of guidelines dated 21.10.2016 show that the same unambiguously mention that pursuant to large number of representations received from the elected representatives conveying the difficulties faced by the public in construction of buildings on their own lands, review of the guidelines dated 18.05.2011 was undertaken. And the Government decided to **amend** the guidelines issued vide guidelines dated 18th May 2011, 18th March 2015 and 17th November 2015. Let us again refer to Clause 2 (a) of the said guidelines dated 21.10.2016 at the cost of repetition which reads as under :

“a) Security restrictions in respect of Defence establishments /



installations located at 193 stations as listed in Part A of Annexure t
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*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.”*

9.3.1 It is evident that no height restriction was imposed qua buildings coming up near defence establishments specified in Annexure A. Whereas, restriction of height was imposed with respect to construction coming up in the vicinity of certain installations/defence establishments specified in Annexure-B. Restriction of height was prescribed with respect to certain buildings (in Annexure B) and not with respect to others (in Annexure A). Thus, there is hardly any force in the argument of Ld. counsel for the appellant that restriction as to height as per 2011 guidelines has to be read even in respect of buildings falling in Clause 2(a) of 2016 circular. Rather, from the reading of Clause 2 (a), it is evident that the Government in its wisdom and after considering various representations and taking into account the security concerns, etc., did not contemplate any prior NOC from LMA/DE with respect to any construction/repair activity beyond 10 meters of DE/installations located at 193 stations as listed in Part A of Annexure to the said circular. As already noted that the DE, the Ordnance Depot, Shakur Basti (as involved in the present case) is listed at Serial No. 144 in Part A of the Annexure to the 2016 Circular. Thus, the construction activity beyond 10 meters of the said defence establishment is permissible, without any height restriction.

10.0 Ld. counsel for respondent no. 4 also referred to order dated



relevant portion of which is reads as under :

“The present I.A. is filed in view of certain recent Guidelines that have been issued by the Central Government, in particular, Guidelines dated 21.10.2016, in which it is stated that so long as the construction is beyond 10 meters of the outer wall of a military compound, there would be no objection by the military authorities to such construction coming up in accordance with law.

Ld. counsel for the petitioner has shown us a recent circular issued by the Kolkata Municipal Corporation dated 02.01.2017 in which it has been directed by all concerned to follow the guidelines dated 21.10.2016 issued by the Central Government.

In this view of the matter and in view of the fact that the appellant alleges that their construction is beyond 10 meters of the outer wall of the military compound concerned, we allow this I.A. and direct the Respondent No.3 to issue an Occupation certificate, as prayed for, in accordance with law.”

10.1 In its counter affidavit dated 07.12.2019 to the present appeal, in para 4 of Preliminary Objections, the respondent no. 4 has stated that in the above case 11 storeyed building of Hotel Radisson Blue was constructed at a distance of more than 10 meters from the boundary wall of military establishment.

10.2 As per the above judgment, considering that the construction was beyond 10 meters of the defence establishment, though stated to be 11 storeyed tall, the Occupation Certificate was directed to be issued by the



11.0 Ld. counsel for the respondent no. 4 also submitted that even otherwise, the Ordnance Depot, Shakur Basti is located in thickly populated area of Delhi; and there are number of multi-storeyed buildings already existing in its front side, namely Bhagwan Mahavir Hospital (Government) with Staff Residence, which is of 35 meters height; Keshav Mahavidyalaya in front of Ordnance Depot, Office of Deputy Commissioner of Police, a Petrol Pump, Vardhman Shopping Complex, Telephone Exchange, Magistic Mall, etc. No objection was ever raised by the appellant at the time of construction of these buildings. Ld. counsel further argued that even 10 storeyed hotel has already come up adjacent to the wall of the Ordnance Depot, with respect to which even Completion Certificate has been issued by the DDA. These facts are not disputed. Ld. counsel for the respondent no. 4 argued that in view of these facts, apprehension expressed by the appellant regarding security threat is absolutely unfounded.

11.1 Though, Ld. counsel for the appellant argued that the objection was raised by the Commandant with respect to the construction of the aforesaid hotel, the fact remains that such a hotel has come up in the vicinity of Ordnance Depot, Shakur Basti and even the completion certificate has been issued to the hotel by the DDA.

12.0 It would not be out of place to mention here that the Ld. counsel for the respondent no. 4's submission that the defence establishment in question i.e., Ordnance Depot, Shakur Basti has been decided to be closed down by the Government drawing attention of this court to a newspaper clipping (Annexure R1 to the Counter Affidavit dated

03.04.2018), was not contested. This submission also finds mention in the impugned judgment, wherein it is recorded that the Ld. counsel for the appellant herein had conceded that in principle decision has been taken to close down some depots including the Ordnance Depot, Shakur Basti. Though it was further stated that the said decision was yet to be finalized.



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13.0 Be that as it may. Admittedly, the distance between the boundary wall of the Ordnance Depot, Shakur Basti and the hospital Site is nearly 47.06 meters. In view of the above facts and circumstances and observations made in preceding paras, in terms of Clause (a) of Para 2 of Guidelines dated 21.10.2016, prior NOC from the Local Military Authority/defence establishments, for construction of building by the respondent no. 4 herein, which is beyond 10 meters, was not required.

14.0 In view of the above, the appellant has failed to demonstrate any infirmity or illegality in the impugned judgment dated 11th Jan. 2019, passed by the Ld. Single Judge.

15.0 Both the appeals are accordingly dismissed.

16.0 Pending applications, if any, stand closed.

(POONAM A. BAMBA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

AUGUST 31st, 2022/manju

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