

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1850 of 2023

Sri. Aurobindo Society, through its Secretary Sunil Wasudeorao Badwe,
Dharampeth, Nagpur. **..Petitioner**

Versus

Union of India, Ministry of Defence, New Delhi
and two others. **...Respondents.**

Dr. R.S.Sundaram, Advocate for petitioner.
Shri N.S.Deshpande, Deputy Solicitor General of India for respondent nos. 1
and 2.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
DATE :- 19th JULY, 2023

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Heard.

2. The challenge raised in the present writ petition is to the communication dated 28.01.2022 issued by the respondent no.2 by which the petitioner-Society has been informed not to carry out any construction activity within the restricted zone of defence land at Nagpur.

3. It is the case of the petitioner-Society, which is registered under the Societies Registration Act, 1860, that it intended to carry out construction on the land owned and possessed by the Society. It's sought necessary permission from the Nagpur Municipal Corporation. On

18.06.2021 the Assistant Director, Town Planning Department sanctioned the building permit and issued a commencement certificate. The development work was to be carried out at Khasra No.339/9, NMC House No.162/1 of Mouza-Sitabuldi, Nagpur. One of the conditions in the building permit was that the development would be carried out in accordance with the Unified Development Control and Promotion Regulations for Maharashtra State, 2020 (for short, the Regulations of 2020). When the Society undertook such construction the Commanding Officer, 118 Infantry Battalion visited the premises on 18.01.2022 and requested the Society to stop the construction for two days to verify the documents on the basis of which the Society was undertaking the development work. The Society on 20.01.2022 thereafter on 24.01.22 issued a communication to the Commanding Officer and sought to commence the work of construction. The parties exchanged various communications but in view of the obstruction caused to the said construction, the present writ petition has been filed seeking to raise a challenge to the communication dated 28.01.2022 which required the Society not to carry out any construction activity.

4. Dr. R.S.Sundaram, learned counsel for the petitioner-Society submitted that under the Guidelines dated 18.05.2011 no construction within 100 meters of defence land was permissible. With regard to multi-storied buildings of more than four storeys the distance was 500 meters.

These Guidelines of 2011 came to be amended on 21.10.2016 and the restricted zone was reduced to a distance of 10 meters. In other words, it was submitted that only if any construction or repair activity was to be undertaken within a distance of 10 meters, a No Objection Certificate (NOC) from the local Military Authority/Defence Establishment was necessary. Referring to the communication dated 17.03.2022 issued by the Assistant Director, Town Planning Department in which it was stated that the distance of the building proposed to be constructed from the defence land was 24.09 meters and the distance between the boundary walls was 29.17 meters. It was clear that the said distance was in excess of 10 meters as per the Guidelines dated 21.10.2016 and hence there was no need to obtain any NOC nor was there any restriction placed to undertake development under the Regulations of 2020. Despite various communications issued to the respondent nos. 1 and 2, the obstruction to the construction continued. The learned counsel placing reliance on the judgment of learned Single Judge in **Writ Petition No.15070 of 2017** (Pralhad s/o Gangaram Banswal and anr. vs. Defence Estate Officer, Pune Circle, Pune and others) decided on 13.08.2018 at the Aurangabad Bench, judgment of the Division Bench in **Writ Petition No.3217 of 2018** (*Sea Kunal Corporation Pvt. Ltd. vs. Municipal Corporation of Greater Mumbai and others*) decided on 27.02.2019 at the Principal Seat and the judgment of the Calcutta High Court in **W.P.A.No.13756 of 2021** (*The Commandant, Ordnance Depot vs. Kolkata Municipal Corporation and*

others) alongwith applications, decided on 08.07.2022 submitted that the Guidelines dated 18.05.2011 having been modified/amended by the Guidelines dated 21.10.2016, the construction beyond the distance of 10 meters from the defence land could not be restrained. It was thus prayed that the petitioner be granted the relief as prayed for.

5. Shri N.S.Deshpande, learned Deputy Solicitor General of India for the respondent nos. 1 and 2 opposed the aforesaid submissions. He referred to the building permit issued by the Nagpur Municipal Corporation on 18.06.2021 and submitted that compliance of the Regulations of 2020 was necessary. The Society was required to comply with Clause 2.2.11 thereof. In view of Clause 3.1.11 and 4.2.0 thereof, it was necessary to obtain the NOC. The building permit having been sanctioned on 18.06.2021, the Regulations dated 02.12.2022 would be applicable. As regards, the Guidelines dated 18.05.2011 it was submitted that the same continued to operate and construction within a distance of 100 meters from the defence land was prohibited. Though the Guidelines dated 21.10.2016 reduced the distance to 10 meters, the same had not been accepted by the Army since the said Guidelines had been issued by the Ministry of Defence without taking into account the security concerns of the Army. In that regard, he referred to the communications dated 05.02.2019 and 06.10.2020. For these reasons the respondents were governed by the Guidelines dated 18.05.2011. The

objection raised by the respondent nos. 1 and 2 to the development activity was in view of the Guidelines dated 18.05.2011. The decisions relied upon by the learned counsel for the petitioner were distinguishable since the aspect of keeping the Guidelines dated 21.10.2016 in abeyance had not been raised therein. It was thus submitted that the respondent nos.1 and 2 did not commit any illegality while objecting to the development undertaken by the Society.

6. Having heard the learned counsel for the parties and having perused the entire material on record, we find that as the Guidelines dated 21.10.2016 had been kept in abeyance by the Army Authorities and in the light of such communication dated 23.02.2023 issued by the Director (lands), Ministry of Defence, the parties would be governed by the Guidelines dated 18.05.2011. As the development work is being undertaken by the Society within a distance of 100 meters of the defence land, the objection raised to the same by the respondent nos. 1 and 2 is justified. The material on record indicates that the Planning Authority has permitted the Society to undertake development in terms of its sanction and the commencement certificate dated 18.06.2021. Further, according to the Office of the Town Planning Department, the development work undertaken is at a distance of 29.4 meters from the defence land. The Guidelines dated 18.05.2011 in clear terms prohibit undertaking of any construction activity

at a distance within 100 meters of defence land. It is true that the said Guidelines have been modified/amended on 21.10.2016, but the Army Authorities including the Superior Authorities of the respondent no.2 have kept the said Guidelines dated 21.10.2016 in abeyance. As a result, the earlier Guidelines dated 18.05.2011 continue to operate and therefore it cannot be said that the respondent no.2 acted in a high-handed manner while restraining the development activity to be undertaken within a distance of 100 meters of the defence land. Further, in view of Clause 2.2.11 of the Regulation of 2020 clearance from the Defence Department alongwith the NOC is required to be obtained. Clause 3.1.11 also refers to such restrictions and on this count also the Society cannot proceed with the development work without complying with the aforesaid clauses.

7. Insofar as the judgment of the learned Single Judge in *Pralhad Gangaram Banswal and another* (supra) is concerned, it has been clearly observed that the Court did not go into the aspect as to whether a NOC was required to be obtained or not in view of the Guidelines dated 21.10.2016. Further, the ratio of the decision in *Sea Kunal Corporation Pvt. Ltd.*(supra) would also not apply to the facts of the present case since the necessary permission had been obtained by the petitioner therein prior to cut off date in the Guidelines dated 18.05.2011. Same is the case with regard to the decision in *Commandant, Ordnance Depot* (supra).

8. Hence for aforesaid reasons, we do not find that there is any case made out to interfere in extra ordinary jurisdiction since it has been shown that the Guidelines dated 21.10.2016 have been presently kept in abeyance. We find that the respondent nos. 1 and 2 have acted in terms of the Guidelines dated 18.05.2011. The writ petition thus fails and it is accordingly dismissed.

Needless to state that it would be open for the petitioner-Society to take such steps as are permissible in law, if the respondent nos. 1 and 2 seek to act in accordance with the Guidelines dated 21.10.2016 after the embargo thereon is lifted.

At this stage the learned counsel for the petitioner prays for continuation of the interim order dated 04.05.2023. By the order dated 04.05.2023 the construction activity undertaken by the Society was made subject to final outcome of the writ petition. This request is opposed by the learned Deputy Solicitor General of India for respondent nos. 1 and 2. Since the writ petition has been dismissed, the construction already undertaken contrary to what has been stated in the Guidelines dated 18.05.2011 is permitted to be retained for a period of four weeks from today.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)