

GAHC010021592024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/624/2024

JITEN BHUYAN
S/O LATE MUKUL BHUYAN
RESIDENT OF HOUSE NO. 661, SHANTIPUR BHOOTNATH, GUWAHATI
781009, KAMRUP M ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS, NORTH BLOCK. CABINET SECRETARIATE, NEW DELHI 110001

2:THE MINISTRY OF DEFENCE
GOVT. OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA. IN THE
MINISTRY OF DEFENSE
SOUTH BLOCK SECRETARIATE BUILDING
RAISINA HILL NEW DELHI 110001

3:THE COMMANDANT
STATION CELL. HQ 51
SUB AREA NARENGI CANTONMENT
781037
KAMRUP M ASSAM

4:THE GROUP COMMANDER
MES QUARTERS. SHANTIPUR MILIATARY STATION
SHANTIPUR
GUWAHATI 781009
ASSAM

5:THE GUWAHATI MUNICIPAL CORPORATION
REPRESENTED BY THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION PANBAZAR
GUWAHATI 781001

6:THE CENTRAL METROPOLITAN DEVELOPMENT AUTHORITY
REPRESENTED BY CHIEF EXECUTIVE OFFICER
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY BHANGAGARH
GUWAHATI 78100

Advocate for the petitioner(s): Mr. AK Bhuyan

Advocate for the respondent(s): Mr. K Gogoi

Central Government Advocate

Mr. S Bora

Standing counsel, GMC & GMDA

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER(ORAL)

31.07.2024

Heard Mr. AK Bhuyan, the learned counsel appearing on behalf of the petitioner. Mr. K Gogoi, the learned counsel appears on behalf of the respondent Nos.1, 2, 3 and 4 and Mr. S Bora, the learned counsel appears on behalf of the respondent Nos.5 and 6.

2. The petitioner herein has filed the instant writ petition challenging the

letter dated 23.01.2024 issued by the Lieutenant Colonel, Staff Officer (Adm.) for Group Commander being the respondent No.4, whereby the petitioner was informed that as his land falls under the restricted zone and he was advised to obtain the *No Objection Certificate* (hereinafter to be referred to as the 'NOC') from the local military authority, through the Commissioner Guwahati Municipal Corporation (for short, the GMC) at the GMC Statfed Building, Bhangagarh, Guwahati and after obtaining the NOC to intimate the Officer who had issued the said communication before start of fresh construction. It was also mentioned in the said notice that in absence of a NOC taken from the local military authority, the office of the respondent No.4 shall initiate FIR as per the Government procedure.

3. The case of the petitioner herein is that the petitioner is the owner of a plot of land measuring 2 kathas under Dag No. 281 covered by Patta No. 136 under Jalukbari Mouza. The petitioner accordingly obtained the permission from the GMC as well as the Guwahati Metropolitan Development Authority (for short, the GMDA) on 08.07.2021 for construction of a residential ground + 2 storied building over the said plot of land.

4. After obtaining the permission, the petitioner started construction of the building in a phased manner. The petitioner initially constructed only the roof of the ground floor plus two floors which were completed as far back as on 2021-22 itself. However, on account of personal and financial reasons, the petitioner could not carry out the further construction of the walls of the building.

5. Subsequently, in the year 2024, when the petitioner started again construction of the building, the petitioner received the impugned notice dated 23.01.2024 issued by the Lieutenant Colonel, Staff Officer (Adm.) for the respondent No.4, thereby directing the petitioner to obtain a NOC from the local military authority and to intimate the said officer. It is under such circumstances, the petitioner has approached this court by filing the instant writ petition.

6. It is the further case of the petitioner that the petitioner's building is situated beyond 50 meters from the local military authority (Station Cell, HQ 51 Sub Area, Narangi Cantonment) and as such, the petitioner could not have been directed vide the impugned notice dated 23.01.2024. The learned counsel appearing on behalf of the petitioner has drawn the attention of this Court to the guidelines issued by the Ministry of Defence, Government of India, dated 21.10.2016, wherein it has been mentioned that in respect to Defense establishments/installations located at 193 stations as listed in Part A of the Annexure to the said circular, shall apply up to 10 meters from the outer wall of such Defense establishments/installations to maintain a clear line of sight for effective surveillance. It was also mentioned in the said circular that any construction or repair activity within such restricted zone of 10 meters would require prior NOC from the Local Military Authority (LMA)/Defence establishments.

7. The learned counsel drew the attention of this Court to the Part A of the Annexure, and more particularly, to Sl.No.43 wherein the area wherein the petitioner has his land and constructions are being carried out have been duly mentioned. The learned counsel, therefore, submits that in terms of Circular

dated 21.10.2016, the requirement of obtaining the NOC from the local military authority would only arise, if the construction is carried out within 10 meters from the installation, in question. The learned counsel for the petitioner further drew the attention of this Court to another set of guidelines issued on 23.12.2022, wherein it has been mentioned that any construction coming within 50 meters radius of the Defence establishment which is listed at Annexure-A, it being a security hazard, the matter should immediately be referred to the next higher authority in the chain of command. In such circumstances, the next higher authority having been convinced, then the Station Commander may convey its objection/views to the local municipality or State Government agencies. In case, the Municipal Authority or the State Government do not take cognizance of said objection, then the matter may be taken up with the higher authorities, if need be, through AHQ/MoD.

8. The learned counsel appearing on behalf of the petitioner further drew the attention of this Court to Annexure-A, and more particularly, to Sl.No.26 wherein the land of the petitioner is situated wherein the constructions are being carried out. He, therefore, submits that even as per the guidelines dated 23.12.2022 also as the land of the petitioner is situated beyond 50 meters, the question of the said guidelines being applicable does not arise.

9. It is seen that pursuant to the filing of the instant writ petition, this Court vide an order dated 12.02.2024 issued notice and directed that till the returnable date the status-quo as regards the building of the petitioner shall be maintained and there shall not be any coercive action by the respondent Nos.1 to 4 on the basis of the impugned notice dated 23.01.2024.

10. Pursuant to the said notice, the respondent Nos.1 to 4 had filed an affidavit-in-opposition. In the said affidavit-in-opposition, it has been stated that the Group HQ had been endorsed with the responsibility for watch and ward duties for the Defence Area Location in Shantipur and Bhutnath vide Station HQ Cell SOP No.6555/R/Q3/Land dated 11.11.2011. Accordingly the GO HQ approached the petitioner to obtain the NOC from the local military authority in terms of the guidelines for issuance of NOC for building construction promulgated by the Ministry of Defence, Government of India vide their letter dated 18.05.2011 which states that where the local municipal laws do not require consultation with the Station Commander, yet the Station Commander feels that any construction coming up within 100 meter radius of defence establishment can be a security hazard, he should refer the matter immediately to the higher authority in the chain of command and in case the higher authority is also so convinced, then the Station Commander may convey his objection/views to the local municipality or the State Government Agencies. It was also mentioned that at no point of time the petitioner was threatened and only informed about the procedure that would be adopted if NOC is not obtained prior to the commencement of construction. It is also seen from the said affidavit that the Guwahati Development Department, Government of Assam has issued a letter on 07.06.2010 whereby certain instruction(s) were issued by the GMC to obtain NOC from the Local Military Authority before issuing building permission within 2000 meters from the boundary of the cantonment and have also requested GMC to incorporate this provisions in the Building Bye Laws of Guwahati. In addition to that, it has also been mentioned that the NOC guidelines promulgated by the Government of India, Ministry of

Defence vide letter dated 23.12.2022 has been kept in abeyance by the Ministry of Defence, Government of India by another letter dated 23.02.2023 and the NOC guidelines has been reverted back to the status as on 22.12.2022 i.e. NOC guidelines of 18.05.2011 (with amendments dated 18.03.2015 and 17.11.2015). It is also seen that on 21.03.2023, another set of guidelines have been issued, wherein Clause 3(b) seems to be in *pari materia* to the guidelines issued dated 18.05.2011 till date. The petitioner has also filed an affidavit-in-reply to the affidavit-in-opposition which is filed by the respondent Nos.1 to 4, reiterating the stands which have been taken in the writ petition.

11. The respondent Nos.5 and 6 have not filed any affidavit-in-opposition. However, it has been submitted by Mr. S Bora, the learned counsel that on account of certain technicalities, the said affidavits so filed by the respondent Nos.5 and 6 has not been accepted by the Registry. Be that as it may, a copy of the said affidavit which was to be filed on behalf of the respondent Nos.5 and 6 was placed before this Court. It is seen from the draft of the affidavit which is placed before this Court by the respondent Nos.5 and 6 that there is no denial to the fact that the petitioner was duly issued the NOC by the authorities concerned on 18.07.2021. However, there is a mention in the affidavit as regards the *Assam Unified Building Construction (Regulation) Bye Laws 2022*. Be that as it may, the said bye laws had come into force in the year 2022, whereas the NOC was issued as far back as on 18.07.2021 and as such, the said bye laws of 2022 had no relevance to the instant matter.

12. In the backdrop of the above, this Court has also heard the learned counsels appearing on behalf of the parties and has also given an anxious

consideration to their respective submissions.

13. From the contents of the writ petition as well as the Annexures enclosed therein, it is seen that the petitioner herein was issued the NOC by the respondent Nos.5 and 6 on the 18.07.2021. This Court has also perused the various guidelines which have been enclosed to the writ petition as Annexures-VI, VII and VIII. In Annexure-VI, which is the guidelines dated 18.05.2011, there is a stipulation contained in Clause (b). The said Clause (b) being relevant is reproduced herein under:

“(b). Where the local municipal laws do not so require, yet the Station Commander feels that any construction coming up within 100 meter (for multistorey building of more than four storeys, the distance shall be 500 meters) radius of defence establishment can be a security hazard, it should refer the matter immediately to its next higher authority in the chain of its command. In case the next higher authority is also so convinced, then the Station Commander may convey its objection/views to the local municipality or State Government agencies. In case the municipal authority/State Government do not take cognizance of the said objection, then the matter may be taken up with higher authorities, if need be through AHQ/MoD.”

14. From a perusal of the said quoted clause as above, it would be seen that it is only when the Station Commander feels that any construction coming up within 100 meters (for multi-storey building of more than four storeys, the distance shall be 500 meters) radius from the Defense establishment can be a security hazard, there is a requirement for the Station Commander to refer the matter immediately to the next higher authority in the chain of its command and it is when a subjective satisfaction is arrived by the next higher authority that it is a security hazard, then the Station Commander shall come to convey its objection/views to the local municipality or the State Government agencies and

it is only when the municipal authority or the State Government do not take cognizance of the said objection, then the matter would be taken up by the higher authority, if need be, through the AHQ/MoD. This particular clause finds reference again to the latest guidelines which has been issued on 21.03.2023 and has been mentioned in Clause 3(b).

15. It is further seen from a perusal of this clause quoted above, which is *pari materia* with Clause 3(b) of the guidelines dated 21.03.2023 that the respondent No.4 on his/her own accord cannot take any steps. It can only take steps provided it arrives at the subjective satisfaction that the construction of the building made within 100 meters or for multi-storied building more than four storied, 500 meters is a security hazard. Upon arriving at that opinion, the same aspect has to be referred to the next higher authority who has also to arrive at the subjective satisfaction that the construction is a security hazard. The higher authority also on its own cannot take any steps. The higher authority thereupon through the respondent No.4 can at best put its objection/views to the local municipal authority or the State Government agencies and in the circumstance the municipality or the State Government agencies do not take cognizance of the said objection, then it has to be taken up through the higher authorities, if need be, through the AHQ/MoD.

16. The reliance so placed by the respondents by way of their affidavit to the guidelines dated 18.05.2011 as well as the guidelines dated 21.03.2023 on the basis of which the impugned notice was issued, in the opinion of this court is totally misplaced *inasmuch as*, the officer who has issued the communication on behalf of the respondent No.4 could not have issued the impugned communication, even as per the mandates of the guidelines.

17. This Court also finds it very relevant to take note of the guidelines dated 21.03.2023 wherein it is further mandated at Clause 4(d) that if the construction is not seen as a security threat by the Station Commander, then it is neither required to raise an objection nor issue a NOC and the individual should be allowed to construct on his property without any interference. Nothing has been placed on record that the Station Commander i.e. the respondent No.4, had arrived at any subjective satisfaction to the effect that the construction so carried out by the petitioner is a security threat. Therefore, in terms with Clause 4(d) of the guidelines dated 21.03.2023 also the impugned notice dated 23.01.2024 is bad in law.

18. In addition to that, a very perusal of the impugned notice would show that there is not even a single whisper that the construction so carried out is a security threat. It seems that the impugned notice had been issued without proper application of mind, even to the extant circulars/ guidelines.

19. Consequently, the impugned circular/guidelines dated 23.01.2024, cannot be sustained in law or even as per the guidelines of the respondent Nos.1 to 4, for which, it stands set aside and quashed.

20. Interim order so passed earlier stands vacated.

JUDGE

Comparing Assistant