


**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 3401/2023

Bhanwar Lal Bhadiyar S/o Shri Bheraram Bhadiyar, Aged About 51 Years, Resident Of Jaton Ka Baas, Khari Kalla, Post Palasani, Tehsil And District Jodhpur (Rajasthan).

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Defence, Govt. Of India, New Delhi.
2. The Commandant, 71 Wris Exptil Unit, Pin 918171, C/o 56 Apo
3. The Commandant, Hq Jodhpur Sub Area Q (Land) C/o 56 Apo
4. Jodhpur Development Authority, Opposite Railway Hospital, Ratanada, Jodhpur Through Commissioner (East).
5. The Deputy Commissioner (East), Jodhpur Development Authority, Opposite Railway Hospital, Ratanada, Jodhpur.

----Respondents

For Petitioner(s) : Mr. D.D. Chitlangi

For Respondent(s) : Mr. Mukesh Rajpurohit, Dy. S.G.
assisted by Mr. Prakash Raika

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reportable

Reserved on 07/07/2023

Pronounced on 17/07/2023

1. This writ petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

"It is therefore, most humbly and respectfully prayed that this writ petition may kindly be allowed and:

1. *By appropriate writ/order or direction, the notice dated 12.02.2023 & 18.02.2023 (Annex.10 & 12) as well as notice dated 20.02.2023 (Annex. 13) may kindly be*

declared illegal and the same kindly be quashed and set aside.

2. By an appropriate writ/order or direction, the respondents may kindly be directed to allow the petitioner to raise his construction on his own patta-suda and JDA approved land.

3. Any other appropriate relief which this Hon'ble High Court deems just and proper may kindly be granted in favour of the petitioner."

2. As the pleaded facts would reveal, in the year 2021, the petitioner had purchased a plot no.5 Sec. 'C', measuring 251.66 sq.yards, situated at Revenue Village Digadi, Jodhpur, and upon an application being filed in respect of the said land, the Jodhpur Development Authority (JDA) issued a freehold patta on 21.06.2022, in favour of the petitioner. Thereafter, an application, alongwith requisite fee, seeking permission for raising construction was submitted by the petitioner, whereupon the site plan was approved by the JDA and construction permission was granted to the petitioner.

2.1. The Ministry of Defence, Government of India (MoD) had issued guidelines for issuance of No Objection Certificate (NOC) by the Local Military Authority (LMA) in the matter of raising constructions, nearby Defence Establishments/Installations located at 193 stations in Part-A of Annexure to the circular dated 21.10.2016, whereby the security restrictions would apply upto 10 meters from the outer wall of such Defence Establishments to maintain a clear line of sight for effective surveillance. Thereafter, vide letter 23.12.2022, another guideline was issued by the MoD extending the limit of 10 meters to 50 meters.

2.2. As a subsequent development, a notice was served upon the petitioner by the respondent no.2 on 12.02.2023 instructing him against carrying out any construction work near Defence area, otherwise stipulated action (which would also include lodged of FIR) against him could be taken and demolition of construction as well. Thereafter the JDA sought mauka report from concerned officials and on 16.02.2023, the mauka report clearly stated that the petitioner was constructing on his own land and had construction permission.

2.3. Subsequently, the respondent no.2 sent a notice to JDA on 18.02.2023 requesting to restrain the petitioner from raising any construction over the land in question. In pursuance of the said notice of the respondent no. 2, the JDA sent a notice on 20.02.2023 to the petitioner directing him to stop the construction activity immediately, failing which, the petitioner shall be subjected to an appropriate legal action. Aggrieved of the notices dated 12.02.2023, 18.02.2023 & 20.02.2023, the present petition has been preferred claiming the afore-quoted reliefs.

3. Learned counsel for the petitioner submitted that the petitioner had taken prior permission for the construction work from the JDA and the site plan for his plot was also approved. It was further submitted that such permission was granted in accordance with the guidelines of the MoD issued in the year 2016, wherein the construction or repair activity within restricted zone of 10 meters would require prior NOC from LMA/Defence Establishments; however the petitioner's construction in question was beyond such restricted zone.

3.1. In furtherance, it was submitted that the guidelines expanding the restricted zone from 10 meters to 50 meters were issued on 23.12.2022, after the petitioner had already obtained construction permission and began the construction activity on the plot in question, and thus, such guidelines could not be applied in a retrospective manner.

3.2. It was also submitted that the Defence authorities as well as the JDA themselves were not clear, as on one hand, the guidelines of the year 2016 were issued due to the large number of representations received from elected representatives to review the guidelines of the year 2011 following the difficulties faced by the general public in constructing buildings on their own land, and yet, on the other hand, vide new guidelines of the year 2022, the restricted zone was extended to 50 meters.

3.3. Learned counsel further submitted that the JDA had sought mauka report and in the same it was clearly mentioned that the petitioner had been raising construction on his own patta-suda land and had produced construction permission as well as chain of documents in the office of the JDA.

3.4. It was also submitted that the petitioner had received, on 08.07.2023, the NOC dated 28.06.2023 for the construction work on the plot in question sent by the registered post from CATCO Office, HQ SWAC, IAF VSN, Chiloda, Gandhinagar Gujarat - 382042.

3.5. Learned counsel, to fortify his submissions, placed reliance on the judgment rendered by a Division Bench of this Hon'ble Court at Jaipur Bench in the case of **Union of India & Anr. v.**

State of Rajasthan & Ors. (D.B. Civil Writ Petition No. 9389/2019, decided on 28.05.2019).

4. Mr. Mukesh Rajpurohit, learned Dy.S.G. assisted by Mr.Prakash Raika, appearing on behalf of the respondents, while opposing the submissions made on behalf of the petitioner, submitted that the petitioner was issued a letter dated 30.03.2021 by the Government of Rajasthan instructing him not to carry out any construction work within radius of 100 meters of the Defence Establishment without obtaining prior NOC from the competent authority of the nearest Defence Establishment.

4.1. It was further submitted that though the patta was issued by the JDA on 21.06.2022 to the petitioner, however the same was done on the condition that while raising construction, norms and parameters laid down therefor from time to time should be strictly followed and complied with. In furtherance, it was submitted that on the date of grant of permission, prescribed norms of restriction on construction were applicable upto 100 meters *vide* Circular No. P.11(9)NNV/2020 dated 03.09.2021 of Urban Development Department, Government of Rajasthan and *vide* letter dated 27.05.2021 of HQ Jodhpur Sub Area (MOD Policy of 2016 was cancelled and policy of 2011 was to be followed); thus irrespective of JDA's permission, the petitioner was required to obtain prior NOC from the concerned Defence establishment.

4.1.1. Vide order No.10(7)NVV/3/2009 Part-III dated 24.02.2020 passed by the Urban Development and Housing Department, Government of Rajasthan, the earlier order of the Department for following the MoD Policy of 21.10.2016, has been cancelled in

pursuance of the order passed in ***Union of India & Anr. v. State of Rajasthan & Ors. (supra)***.

4.2. It was also submitted that in accordance with the guidelines of the year 2022, where the local municipal laws do not require, yet if Station Commander feels that any construction coming up within 50 meters radius of the Defence Establishment listed at Annexure-A is a security hazard, the matter would be referred to its next higher authority, and on such next higher authority is also convinced, the Station Commander may convey its objections to the local municipalities or State agencies; in the present case, the local Defence authority had raised an objection against the illegal construction in question, as the construction was being done at a distance of 40 meters from the defence establishment in the Digadi Kalan area, and thus, respondent authorities had issued the impugned notices.

4.3. In furtherance, it was submitted that the policy of the year 2022 had been kept in abeyance vide MOD letter No. F11026/20/2011/D (Lands) dated 23.12.2022, and vide communication dated 21.03.2023 issued by the Director General LW&E/Land, IHQ of MOD, New Delhi, it was informed to All Command HQs that NOC guidelines dated 18.05.2011 would be reverted with amendments dated 18.03.2015 and 17.11.2015; the Defence establishment deals with the work of confidential and sensitive nature and the main task is to maintain secrecy in its existence, location, task and equipment, and if construction would be allowed, then the same could compromise various confidential data and details of the Defence.

5. Heard the learned counsel for the parties as well as perused the record of the case and judgment cited at the Bar.

6. This Court observes that the petitioner had purchased the plot in question, wherefor a freehold patta was issued in his favour and the approval for construction over the same was given by the JDA; the impugned notice dated 12.02.2023 was sent to the petitioner by the respondent no.2 instructing against the construction being raised on the plot of petitioner; however the petitioner paid no heed to the same, and consequently, the impugned notice dated 18.02.2023 was issued to the JDA to restrain the petitioner from raising any construction over the plot in question, and subsequently, another notice of similar nature dated 20.02.2023, impugned herein, was issued by the JDA to the petitioner.

7. This Court further observes that though the petitioner was issued a patta for his plot by the JDA, however his plot is situated at a distance of 40 meters from the Defence Establishment and on the date of issuance of the patta and approval given for construction work, guidelines of 2011 as issued by MoD vide its letter 18.05.2011 were in existence; the relevant portion of the said letter is reproduced as hereunder:

"(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 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."

8. This Court also observes that the petitioner has relied upon the guidelines so issued by the MoD in the year 2016, while contending that only construction within 10 meters of restricted zone would require prior NOC from LMA; however the same has been scrapped vide subsequent Order No. 10(7)NVV/3/2009 Part-III dated 24.02.2020 of Urban Development and Housing Department of Government of Rajasthan, in pursuance of the orders passed by the Division Bench of this Hon'ble Court passed in ***Union of India & Anr. v. State of Rajasthan & Ors. (supra)***; the guidelines of the year 2016 were done away with also vide letter dated 27.05.2021 of HQ Jodhpur Sub Area and vide Circular No. P.11(9)NNV/2020 dated 03.09.2021 of Urban Development Department, Government of Rajasthan.

9. This Court further observes that though the guidelines issued in the year 2022 have been kept in abeyance vide MoD letter No. F11026/21/2011/D (Lands) dated 23.02.2023; however vide

communication dated 21.03.2023 issued by the Director General LW&E/Land, IHQ of MoD, New Delhi, the NOC guidelines dated 18.05.2011 have been made applicable, and even though the petitioner has received the NOC No.SWAC/2564/8/5635/ATS (BM) from the HQ for construction of building of a height of 10.40m AGL or 222.04m AMSC (including all projection) at Plot No.05, Khasra No.178 & 179 of Village Digari at Jodhpur, however, the same is subject to the condition, amongst others, that, *'The applicant is responsible to obtain NOC/ all statutory clearances from AAI/State Govt./Municipalities/any other concerned authorities including approval of building plans. Clearance shall also be obtained separately from any other Defence Establishment in the vicinity of proposed construction'*; the petitioner herein has yet to obtain such clearance with regard to the construction work in question, from the competent authority of the concerned Defence Establishment.

10. This Court also observes that since the guidelines of the year 2011 are applicable in the present case and the construction in question is within 40 meters of the Defence Establishment, it would result in compromising the various confidential and secret data, information and details of the Defence, which cannot be permitted under any circumstances.

11. Apart from what has been observed hereinabove, the State has a right to impose strategic restrictions in the matter of Defence Establishments, which have their own sanctity, as they cannot be breached only on the basis of other local laws, which are applicable in the urban areas. The Defence Experts, having

exhaustive knowledge of such issues, have the know how, to prevent any diminishing security environment, and thus, even over and above the urban laws/local laws/municipal laws, the vicinity of Defence Establishments ought to be strictly governed by the parameters, time and again, revised by the Defence Experts.

12. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case, this Court does not find it a fit case so as to grant any relief to the petitioner in the present petition.

13. Consequently, the present petition is dismissed. All pending applications stand disposed of.

(DR.PUSHPENDRA SINGH BHATI), J.

skant/-