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High Court

Chamber No. 138, 2nd Floor, Infront of State Bank of India,
High Court Allahabad.

Off/Resi: 95-A/1-A, Lukerganj, Allahabad. 211003.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD.

Judgment Dated : 07-04-2015

District : Chaziabad

C.M.W.P. No. 68456 of 2014

K.D.P. Build Well Pvt Ltd Patn Petitioners/Appellant

Versus.

State of U.P. Others Respondents/Opp.Party.



Reserved on 02.04.2015
Delivered on 07.04.2015

Court No.39

Case :- WRIT - C No. - 68456 of 2014

Petitioner :- KDP Buildwell Private Limited Thru' Director M.K. Goyal
&Anr

Respondent :- State Of U.P. & 2 Others

Counsel for Petitioner :- S.K. Rao, O.P. Singh

Counsel for Respondent :- C.S.C., Mahendra Pratap

Hon'ble Dilip Gupta, J.

Hon'ble Vinod Kumar Misra, J.

KDP Buildwell Private Limited¹, which had purchased a plot bearing Khasra No.1833-A admeasuring 7106.85 sq. mts. in Sadar Pur, Swaran Jyantipuram, Ghaziabad from the Ghaziabad Development Authority, Ghaziabad² by a sale deed dated 29 March 2012 for sale consideration of Rs.4,02,17,840/-, has filed this petition for a direction upon the Provincial Armed Constabulary, Moradabad³ for granting a No Objection Certificate⁴ for a group housing project on the aforesaid plot which adjoins the plots provided to the PAC by the Development Authority.

It is stated that after purchase of the aforesaid plot, the petitioner submitted a plan with the requisite fee in the office of the Development Authority for construction of a residential colony. The Executive Engineer of Paschimanchal Vidyut Vitran Nigam Limited, Ghaziabad granted the NOC on 5 October 2012, the Chief Fire Officer, Ghaziabad

1 petitioner

2 Development Authority

3 PAC

4 the NOC

granted the NOC on 6 October 2012, the Tehsildar/Property In-charge of the Ghaziabad Nagar Nigam granted the NOC on 7 December 2012, the State Level Environment Impact Assessment Authority granted the environmental clearance for the proposed group housing on 17 April 2013 and the Wing Commander in the Government of India, Ministry of Defence granted the NOC to the petitioner on 4 June 2013 for construction of 64.05 mts. high building subject to certain conditions. The Development Authority also sent a communication dated 15 April 2013 to the Commandant, 47th Bn. PAC for granting the NOC. This communication was received by the Commandant on 20 April 2013. However, a communication dated 8 September 2013 was sent by the Commandant expressing the inability of the PAC in granting the NOC for security reasons. The petitioner, thereafter, made repeated requests to the Commandant, 47th Bn. PAC by letters dated 11 September 2013, 3 April 2014, 4 August 2014 and 16 August 2014 to reconsider granting the NOC as enough security measures had been taken by it but it is stated that no decision has been taken on these communications.

A short counter affidavit has been filed on behalf of the Development Authority which has been impleaded as respondent no.4 in the writ petition. It has been stated that Govindpuram and Swaran Jyantipuram Schemes have been shown in the Master Plan in Sectors 29 and 27 respectively. Swaran Jyantipuram, which is in Sector 27, is earmarked for residential use. Shanti Surkasha Bal was also provided 17.17 acres of land which had been acquired for the Development

Authority in this Sector and it is this land which subsequently transferred to PAC. It has also been stated that the entire land which was acquired by the Development Authority was planned for residential use. The land which was meant for group housing was later on sold to the petitioner by the Development Authority. The Development Authority has also come out with a specific case in the short counter affidavit that the U.P. (Regulation of Building Operation) Directions, 1960⁵ were in force before the commencement of the U.P. Urban Planning and Development Act, 1973⁶ and now as the provisions of Bhawan Nirman Evam Vikas Upvidhi, 2008⁷ are applicable, there is no need for taking NOC from PAC. In this connection, the communication dated 13 February 2015 sent by the Development Authority to the Commandant, 47th Bn. PAC withdrawing its earlier communication dated 15 April 2013 for granting the NOC has been enclosed with the short counter affidavit. The letter also mentions that the conditions regarding security contained in the approval granted by the Development Authority on 24 January 2013 shall, however, continue to remain operative.

A short counter affidavit has also been filed on behalf of PAC. It has been stated that under paragraph 5 of the 1960 Directions, NOC was required to be obtained and by the communication dated 8 September 2013 the PAC informed the Secretary of the Development Authority, in response to the communication dated 15 April 2013, that it was not possible to grant the NOC. It has also been stated that the troops

5 1960 Directions

6 1973 Act

7 2008 Upvidhi

continuously rehearse in the campus and, therefore, for safety purpose it is not desirable to grant the NOC.

Learned Senior Counsel appearing for the petitioner submitted that the 1960 Directions were issued on 23 July 1960 under Section 14 of the U.P. (Regulation of Building Operations) Act, 1958⁸ but as Section 14 of the 1958 Act was omitted by Section 56 of U.P. Act No.41 of 1976, the 1960 Directions cease to have effect and, therefore, reliance on paragraph 5 of the 1960 Directions for grant of NOC is misplaced. Learned Senior Counsel has also submitted that the security reason stated by the Commandant, 47th Bn. PAC for not granting the NOC is without any basis and that in any case as the Commandant, PAC did not report to the Development Authority within thirty-days from the date of receipt of the communication dated 15 April 2014 sent by the Development Authority, it shall be assumed under paragraph 5 of the 1960 Directions that the PAC has no objection to the proposed development of land or construction.

Sri Mahendra Pratap, learned counsel appearing for the Development Authority relied upon the averments made in the short counter affidavit and submitted that there is no requirement of seeking a NOC from the Development Authority and, therefore, the communication dated 15 April 2013 earlier sent to PAC for grant of NOC was subsequently withdrawn by the Development Authority by sending the communication dated 13 February 2015 to the Commandant, PAC.

⁸ the 1958 Act

Sri Piyush Shukla, learned counsel appearing for PAC, however, submitted that Section 14 of the 1958 Act may have been omitted by Section 56 of U.P. Act No.41 of 1976 but in view of Section 62 of U.P. Act No.41 of 1976, all the directions issued by the State Government under Section 14 of the 1958 and in force immediately before the commencement of U.P. Act No.41 of 1976 shall continue to be in force so far as they are consistent with the provisions of the 1958 Act and shall have effect as Regulations made under Section 5 of the 1958 Act until added to, amended or rescinded by the State Government. Learned counsel, therefore, submitted that paragraph 5 of the 1960 Directions continue to remain in force and it is because of security reasons that the NOC was not given to the petitioner by the PAC.

We have considered the submissions advanced by the learned counsel for the parties.

It is not in dispute that a registered sale deed was executed by the Development Authority in favour of the petitioner on 29 March 2012 for a sale consideration of Rs.4,02,17,840/- in respect of plot bearing Khasra No.1833-A admeasuring 7106.85 sq. mts. situated at Sadar Pur, Swaran Jyantipuram Scheme of the Development Authority. According to the Development Authority, Swaran Jyantipuram Scheme is situated in Sector 27 which has been earmarked in the Master Plan for residential use. The land, which has been provided to PAC in this very Sector, is also for residential use. Initially, 17.17 acres of vacant land which had been acquired by the Development Authority was given to Shanti Surkasha Bal

for residential use. This land was subsequently given to the 47th Bn. PAC. The Executive Engineer of Paschimanchal Vidyut Vitran Nigam Limited, the Chief Fire Officer, the Property In-charge of the Ghaziabad Nagar Nigam, the State Level Environment Impact Assessment Authority and the Wing Commander in the Government of India, Ministry of Defence have given their NOC to the petitioner and it is only the Commandant, PAC who declined to issue the NOC. The Development Authority had granted approval to the plan submitted by the petitioner for group housing in the plot by the letter dated 24 January 2013 subject to various conditions, including the condition that the entire security responsibility would be that of the petitioner since the plot adjoins the PAC Training Centre. The Secretary of the Development Authority had sent a communication dated 15 April 2013 to the Commandant, PAC that the petitioner had informed the Development Authority by letter dated 14 April 2013 that it wanted to start the construction and, therefore, NOC may be granted. This letter was received by the Commandant, PAC on 20 April 2013. In response to this letter, the Commandant, PAC sent a communication dated 8 September 2013 to the Secretary of the Development Authority mentioning therein that by letter dated 3 September 2013, the PAC Directorate has informed that because of security reasons the NOC to the construction of a multi storied building by the petitioner cannot be granted.

It needs to be noted that subsequently the Secretary of the Development Authority had sent a communication dated 13 February

2015 to the Commandant, PAC mentioning therein that the land which was allotted to the PAC by the Development Authority is earmarked for residential use and the land which was sold by the Development Authority to the petitioner is also earmarked for group housing and that after coming into force the 1973 Act and the 2008 Upvidhi, the 1960 Directions no longer continue to operate and, therefore, there is no requirement of obtaining a NOC from the PAC. It has, therefore, been stated in the letter that the earlier communication dated 15 April 2013 sent by the Development Authority for granting the NOC stands withdrawn.

The issue that arises for consideration is whether the 1960 Directions would continue to operate after the omission of Section 14 of 1958 Act by U.P. Act No.41 of 1976 because the 1960 Directions were issued under Section 14 of the 1958 Act. This issue has to be examined in the light of Section 62 of the U.P. Act No.41 of 1976 which contains Transitory Provisions which are as follows:-

“62. Transitory Provisions.- All regulations made by the State Government under Section 19 of the principal Act and all directions issued by the State Government under Section 14 of the principal Act and in force immediately before the commencement of this Act shall continue to be in force so far as consistent with the provisions of that Act as hereby amended, and have effect as rules and regulations made respectively under Section 19 or Section 5 of the principal Act, as amended by this Act until added to, amended or rescinded by the State Government.”

What is contended by the Development Authority is that though the 1960 Directions may continue to operate because of Section 62 of the

Transitory Provisions but the 1960 Directions are not consistent with the provisions of the 1958 Act because of the 2008 Upvidhi.

It may not be necessary for the Court to examine this issue because even if the 1960 Directions continue to operate, then too it would first have to be seen whether it can be assumed that the PAC has no objection to the proposed group housing plan under the provisions of paragraph 5 of the 1960 Directions. To appreciate this, it would be appropriate to refer to paragraph 5 of the 1960 Directions which is as follows:-

"5. Land adjoining Government property. In case of an application pertaining to land within 100 feet of the property or road maintained by the Public Works Department, Military, Irrigation or any other Government department, or belonging to a Railway Administration, the application shall be in duplicate and the plans in quadruplicate. One copy of application and plans shall, on receipt, be forwarded by the Prescribed Authority to the Officer-in-Charge of the department concerned for report before permission is granted, and such officer shall report to the Prescribed Authority within thirty-days from the date of receipt of the copy of the application whether or not he has any objection to the proposed development of land or construction. In case such officer fails to report within the stipulated period of thirty days, it shall be assumed that he has no objection to the proposed development of land or construction."

In the instant case, what is not in dispute is that the Secretary of the Development Authority had sent a communication dated 15 April 2013 to the Commandant, PAC for grant of NOC to the petitioner. This communication has been enclosed as Annexure-CA-3 to the short counter affidavit filed on behalf of the PAC. A perusal of the said document clearly shows that the letter was received by the Commandant, PAC on

20 April 2013. According to the PAC, the Secretary of the Development Authority was informed by the letter dated 8 September 2013 that it was not possible to grant the NOC because of security reasons. This communication dated 8 September 2013 is based on the communication dated 3 September 2013 sent by the PAC Directorate. Paragraph 5 of the 1960 Directions postulates that in case of an application pertaining to land within 100 feet of the property maintained by Government Department, the application shall be forwarded by the Prescribed Authority to the Officer-in-Charge of the Department concerned for report and such officer shall report to the Prescribed Authority within thirty-days from the date of receipt of the copy of the application whether or not he has any objection to the proposed development of land or construction but in case such officer fails to report within the stipulated period of thirty days, it shall be assumed that he has no objection to the proposed development of land or construction. The Commandant, PAC admittedly had received the letter dated 15 April 2013 sent by the Secretary of the Development Authority for grant of NOC on 20 April 2013 but the report was not submitted by him within thirty-days and was subsequently submitted on 8 September 2013. In such circumstances, it has to be assumed that the Commandant, PAC has no objection to the proposed development of land or construction. The subsequent letter dated 8 September 2013 sent by the Commandant, PAC refusing to grant the NOC is, therefore, of no consequence.

Even otherwise, only a bald statement about security reasons has been made by the PAC for declining to grant the NOC. As noticed above, the land provided by the Development Authority to the PAC is earmarked for residential use. The adjacent land which was sold by the Development Authority to the petitioner is also earmarked for group housing. In such circumstances, even if the PAC has established a Training Centre it was necessary for it, in case it was declining to grant the NOC, to give good and sufficient reasons as to why it felt that security reasons required it to decline the NOC to the petitioner. A bald statement of the nature which has been made does not suffice, particularly when all the other departments including the Ministry of Defence had granted the NOC. The plan which was approved by the Development Authority in clause 26 adequately takes care of the security reasons of the PAC. It provides that all security related obligations because of the land being close to the PAC Training Centre should be taken by the petitioner. Steps that have been taken by the petitioner for security purpose have been highlighted by the petitioner in the communication dated 3 April 2014 sent to PAC and these are as follows:-

- “1. We are taking a 15 mtr. set-back area between the boundary of PAC and our building.
2. We are keeping the height of our boundary wall up to 10 feet.
3. We are applying forked Wire fencing over the boundary wall.
4. We are applying mercury lights over the boundary wall.
5. We are planting straight Height trees very closely to each other so that they will look like a wall between PAC area and out Project and remove the visibility to see across the project.”

In another letter dated 4 August 2014, the petitioner has pointed out the following security factors :-

"1. Possible Intrusion via Objects from persons with detrimental intension from our tower.

I. As per our design, the boundary wall will be of 10 ft. height with a cover of concertina wires so that no one will be able to scale the walls to gain entry in your perimeter.

II. We will have the entire complex covered by CCTV cameras with infrared and continuous recording round the clock with 10 days back-up. We will provide access as and when required, by your personnel to monitor the video recordings.

III. We have a 15m set-back as per our building design thereby ensuring an excess area which will not allow anyone to physically throw any object from our compound to the perimeter of PAC.

IV All ingress and egress areas will have security personnel with gated metal detectors so that no one can enter the building premise with objectionable materials.

V. The project will have round the clock security, manned by security personnel from reputed security service provider.

VI. No flat owner will be given the roof rights of the premises. The access to the roof will be kept locked and the keys will be with the designated security personnel.

2. Provision for Helipad

I. The Helipad for operations of the helicopters can be designed in conformance with norms advised by DGCA (Annexure A). The design of our building qualifies for the same.

II. As per the norms, the space required for safe landing should be free from obstructions. This can be kept in mind at the designing stage.

III. As per our building design, we are keeping a set-back area of 15 metres between the building footprint and the boundary wall free.

3. Potential hindrance for Radio Mast Communication working

I. Regarding the radio mast for communication, the company designing and installing the same can keep in view the presence of our building.

II. However, if required, the High Frequency Radio Mast can be installed on one of our Terrace of the designated building for which we will voluntarily provide the space."

In yet another letter dated 16 August 2014, the petitioner has also highlighted the following factors regarding security:-

"We attach herewith a detailed proposal as received from Vantage-Integrated Security Solutions, a well established security solutions provider with a 24 year old presence in the Security & Surveillance industry.

As a principal OEM, Vantage offers the latest technology and products in the security and surveillance domain. They offer tailor-made solutions across industries and are now a 300+ strong team of professionals with direct presence in Europe, North America, Middle-East and Asia, which helps them cater to over 30 countries worldwide. Vantage offers complete IT solutions for all kinds of small, medium and large organizations. With vast experience, in house R&D team and technical know-how, they are fully equipped and capable of providing world-class solutions, customized according to the needs of their clients.

The proposed security mechanism is 5 layered security solution including

1. Boom barrier
2. An electronic access control system
3. Closed-circuit television
4. Non-lethal electrified fence system and
5. Hand-held & Door frame metal detector"

The aforesaid factors which have been highlighted by the petitioner appear to adequately take care of the security problems of the PAC. Thus, the reason assigned by the PAC for declining to grant the NOC is without any basis and the PAC cannot object to the raising of the construction by

the petitioner merely on the assumption that there would be some security problem.

In this view of the matter, it would not be necessary for the Court to examine the contentions raised by the petitioner and the Development Authority that the 1960 Directions would not continue to operate because of the omission of Section 14 in the 1958 Act and the enforcement of the 2008 Upvidhi.

Thus, for the reasons stated above, the writ petition deserves to be allowed and is, accordingly, allowed. It shall be assumed that the PAC has no objection to the proposed development of land or construction by the petitioner and, accordingly, the PAC is restrained from causing any interference in the constructions which the petitioner proposes to raise on the basis of the plan approved by the Development Authority.

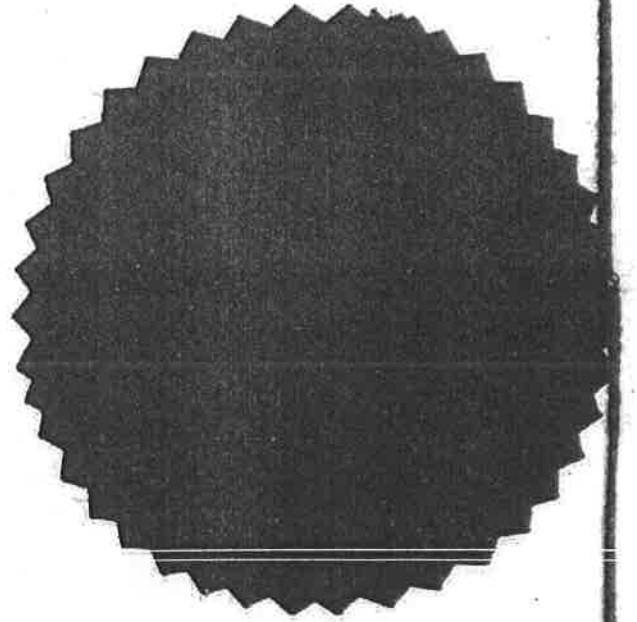
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(Dilip Gupta, J.)

(Vinod Kumar Misra, J.)

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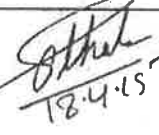


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