

Appellate Tribunal, Jaipur Development Authority, Jaipur

Presiding Officer: Nandini Vyas, RHJS

Apeal No. 253/2017

Air Force Neval Housing Board, Air Force Race Course, New Delhi through President, Management Board Shri Bhupindra Kumar

Appellant

Versus

Jaipur Development Authority through Secretary, Indra Circle, Jawahar Lal Nehru Marg, Jaipur.

Respondent

Advocates Present :


- i) Sh. Dharmendra Sharma) for appellant.
- ii) Sh. Mahendra Singh Yadav)
- iii) Sh. G. I. Sharma for respondent.

JUDGMENT

Date : 26.07.2017

This appeal has been preferred by Air Force Neval Housing Board (AFNHB) against the respondent JDA to quash the notices dt. 28.09.2015 issued under sec. 32 & 33 JDA Act 1982, with the averments that the appellant AFNHB is a registered society constituted for the welfare of serving and retired Air Force and Navy personnel as well their families. The society operates on a "No profit no loss" basis in pursuance of its objective of providing affordable housing to its members.

2. To fulfill this object in Jaipur City, the society was allotted 40480 sq. mtr. land in khasra no. 55/1 at gram Boyatawala Banad Tehsil Jaipur through registered lease deed and site plan dt. 11.01.2012 and 13.07.2012 (amended). AFNHB had undertaken to develop this land and to construct 9 towers of 9 to 10 floors including stilt each consisting of 444 dwelling units. The scheme is self financed by servicing and retired members of the Indian Air Force and Navy.


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3. After obtaining all requisite statutory approval, no objection and clearance certificates from various authorities, for construction of flats the AFNHB applied for approval of building plan and other mandatory clearances which were duly approved by the JDA on 27.06.2013.

4. After completion of necessary statutory formalities, AFNHB awarded the contract for construction to a builder and the construction work at the site was started in Sept. 2014. When the construction had reached at an advanced stage of 7th floors on most of the towers the JDA issued the "stop work" notices dt. 28.09.2015 under sec. 32 & 33 JDA Act 1982. It was informed that this construction work was stopped because of the objection raised by Captain Sorabh Singh of Army Unit 5/5 GR unit (FF), Indian Army. It was revealed that the no objection certificate was not obtained from the Army Headquarter as such NOC was based on the guidelines dt. 18.05.2011 issued by Ministry of Defence, which puts restriction of height of 12 Mts. of any construction within 100 mts. of defence land.

5. It is further stated by the appellant that the AFNHB has spent approximately Rs. 42.00 crores on the duly approved project, construction was being carried on strictly according to the plan approved by JDA itself and there was no deviation at all. The notices to stop work are patently illegal as the construction was being carried out with due permission and approval granted by the JDA, in all respects. These notices have greatly prejudiced, caused distress and a huge financial loss to AFNHB. Therefore, the impugned notices are required to be quashed and the JDA should be directed to compensate the appellant for the loss and agony caused due to arbitrary action of JDA.



6. An application under sec. 5 of the Limitation Act has also been submitted with the averments that the appellant society was continuously trying to get the NOC from the military station and they also approached to Hon'ble Rajasthan High Court for the remedial order, but were directed to approach this tribunal, hence the delay caused is bonafide and needs to be condoned. This application and the request is not contested by JDA. The grounds mentioned for the delay seem bonafide hence the delay is condoned and the appeal is admitted for hearing.

7. The JDA in its reply to the appeal memo admitted the facts mentioned and submitted that the circular no. 11 dt. 12.06.2017 which deletes the requirement of NOC within the

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paraferri of 500 mtr. of all army cantonment areas is also applicable in the matter in dispute. The guidance in this matter was sought from the State Government and looking to the circular dt. 12.06.2017, the decision will be taken by the BPC in its next meeting.

8. Heard both the parties and perused the record.

9. It is an admitted fact that the JDA accorded the permission and approved the building plan of the appellant ASNHB for the construction of high-rised multi-storied residential complex and on account of the objection raised by the Army Captain, stop work notices dt. 28.09.2015 were issued. Looking to the reply filed by the JDA and int helight of the order dt. 12.06.2017 issued by the government of rajasthan the provision regarding the requirement of NOC within the vicinity of 500 mtr. from the outer boundary of army cantonment area has been deleted from the building bye laws for the cities which are not included in part "A". The Jaipur City and the captioned building is also not included in part "A" defence establishments, therefore, the requirement of obtaining NOC from the local military authority has also become redundant for the matter in question.

10. The appellant has challenged the notices given under sec. 32 & 33 JDA Act. The impugned notices were issued in the light of the prevailing requirement of NOC from the military station, as at that time the building was within the vicinity of 100 mtr. of defence establishments hence, the stop work notices issued by the JDA were well within the jurisdiction and were legal. During the pendency of this appeal the above mentioned order dt. 12.06.2017 of state government deleted that the requirement of NOC beyond the vicinity of 10 mtr. from the outer boundary of defence establishments and the Jaipur City is not included in part A. The disputed building is 100 mtr. away from the Newaru complex military station. Therefore, looking to the order dt. 12.06.2017, the notices under sec. 32 & 33 JDA Act have become infructuous, hence liable to be quashed and the appellant society is entitled to resume the construction work according to the approved building plan dt. 27.06.2013 issued on the basis the decision taken by the BPC in its meeting dt. 11.01.2013.



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ORDER

The appeal filed by the Air Force Naval Housing Board against the JDA is accepted and the impugned notices dt. 28.09.2015 under sec. 32 & 33 JDA Act, are hereby quashed. The appellent society is entitled to resume the construction work according to the approved building plan dt. 27.06.2013 issued on the basis the decision taken by the BPC in its meeting dt. 11.01.2013.

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Presiding Officer, Appellate Tribunal,
Jaipur Development Authority, Jaipur

Judgment dictated, pronounced and signed today i.e. 26.07.2017 in open Tribunal. A copy of this order may be made available to Jaipur Development Authority for necessary action.

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26-7-2017
(Name of the Officer)
प्रधान अधिकारी

Presiding Officer, Appellate Tribunal,
Jaipur Development Authority, Jaipur



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