



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L.) NO. 36387 OF 2025
WITH
INTERIM APPLICATION (L.) NO. 2186 OF 2026

Techno Freshworld LLP,)
A Limited Liability Partnership)...Petitioner
Vs
1. Maharashtra Housing and Area Development)
Authority)
2. Executive Engineer, Building Permission, MHADA)
3. Union of India, Ministry of Defence through)
(a) The Flag Officer, Commanding-in-Chief)
Western Naval Command.)
(b) The Commander, Executive Officer,)
INS Trata)
4. Prabhadevi Indraprastha Co-op. Housing)
Society Ltd.)...Respondents

Mr. Ravi Kadam, Senior Advocate with Mr. Rohan Kadam, Mr. Sanjay Udeshi, Mr. Aditya Udeshi and Mr. Rahul Sanghavi i/b. M/s. Sanjay Udeshi & Co. for Petitioner.

Mr. P. G. Lad with Ms. Sayali Apte, Mr. Murlidharan Kalathil for Respondent Nos.1 & 2/MHADA.

Mr. Rajshekar Govilkar, Senior Advocate with Mr. Krishnakant Deshmukh and Ms. Shaba Khan for Respondent No.3.

Mr. Rohaan Cama with Mr. Shishir Joshi and Ms. Priti Shukla i/b. Ms. Priti Joshi for Respondent No.4.

Cdr. Himanshu Sharma, INS Trata, Cdr. Archit Thorat, HQWNC and Cdr. Aditya Deep Singh, HQWNC Officers are present in Court.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

RESERVED ON : 28 JANUARY 2026.
PRONOUNCED ON : 5 MAY, 2026

**JUDGMENT (Per G. S. Kulkarni, J.).**

1. This petition under Article 226 of the Constitution of India again brings to the fore and resurrects the issue on a mandatory 'NOC' to be obtained from the Naval Authorities (INS Trata, Worli), in the present case in regard to construction of two buildings. The first building is a completed construction which would rehabilitate 72 members of respondent No.4-society. The second building is at the final stage of completion which is a sale building. The action impugned in the present petition is of respondent No.1-Maharashtra Housing and Area Development Authority (MHADA) issuing a stop work notice as also denying Occupation Certificate for want of NOC from the defence / Navy in undertaking such construction. Such issue has not reached the Court for the first time, considering the decisions of this Court and view taken by this Court in a series of judgments, not accepting the stand of the respondent-Navy, as also, the Supreme Court confirming the decision of this Court in the case of **Union of India vs. The State of Maharashtra & Ors.**¹ by rejecting the Special Leave Petition.

2. This writ petition impugns the action of Respondent Nos.1 and 2 in issuing the stop work notice dated 24 October 2025 (received by the Petitioner on 28 October 2025), whereby, despite having granted development permissions from time to time by the Planning Authority, such as MHADA, the petitioner has been ordered to halt construction for want of submission of a Naval NOC from

¹ Writ Petition No. 3145 of 2021 decided on 23 October, 2023



respondent No.3, purportedly as a pre-condition for the construction.

3. The facts relevant to the adjudication of the present proceedings are:

The Petitioner is a Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008. Respondent Nos.1 to 3 are authorities within the meaning of Article 12 of the Constitution of India and Respondent No.4 is a co-operative housing society registered under the Maharashtra Co-operative Societies Act, 1960 and is the lessee of the plot bearing C.S. No. 209 (Part) of Worli Division admeasuring 1601.25 sq. mtrs., which has been redeveloped by the Petitioner.

4. The Brihanmumbai Municipal Corporation (for short “the **BMC**”) is the owner of a larger piece of land bearing C.S. No. 209 of Worli Division situated at the junction of Balaji Temkar Marg and New Prabhadevi Road, Worli, Mumbai 400030. The Maharashtra Housing and Area Development Authority (MHADA) is the lessee of the said land. The Maharashtra Housing Board, the MHADA’s predecessor developed a layout known as “Adarsh Nagar” on the said larger piece of land. In the process, MHADA constructed a building on a portion of the said larger land being C.S. No. 209 (Part) admeasuring 1601.25 sq. mtrs. or thereabouts (hereinafter referred to as “the said Land”), which is known as “Building No. 41” containing 72 residential units for accommodation of industrial workers on tenancy basis (hereinafter referred to as “the said Old Building”). The said Land and the said Old Building are collectively referred to as “the said Property”.



5. In the year 1981, MHADA's tenants who were occupying the said Old Building formed, Respondent No. 4 co-operative housing society, known as "Prabhadevi Indraprastha Co-operative Housing Society Limited registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. By a Deed of Sub-Lease dated 10 June 2009, MHADA granted sub-lease of the said Land to Respondent No.4 for a period of 99 years commencing from 1 April 1980 and simultaneously, by a Deed of Sale of even date, sold the said Old Building to Respondent No.4.

6. The said Old Building which was constructed in or about the year 1953, had become dilapidated. Respondent No.4, considering the larger interest of 72 families residing therein, decided to undertake redevelopment of the said Property under Regulation 33(5) of the Development Control and Promotion Regulations for Greater Mumbai, 2034 (for short "DCPR-2034") by appointing the Petitioner as the developer. Accordingly, a Development Agreement dated 31 March 2022 and a Power of Attorney dated 11 April 2022 were executed between the parties followed by a tripartite agreement dated 17 June 2022 with MHADA granting redevelopment rights to the Petitioner.

7. The Petitioner obtained BMC DP Remarks dated 31 December 2020, which indicated that the larger land bearing C.S No. 209 falls within Coastal Regulation Zone (CRZ). As the remark pertained to the larger land which is located at the landward side of the Mahim Bay, and not specifically to the said Land, on the request of Respondent No. 1, the Petitioner approached the



Institute of Remote Sensing, Anna University, Chennai (IRS Chennai) to get the local level CRZ map prepared and thereby ascertain the shortest distance between the High Tide Line (HTL) of the Mahim Bay and the said Land. Additionally, the Petitioner also requested the IRS, Chennai to ascertain the distance of the said Land from the Defence Establishments within the vicinity. Accordingly, by its report dated 24 August 2021 IRS Chennai certified that the said Land is completely outside CRZ, with a distance of 505.61 meters from the High Tide Line, and further recorded that the said Property is situated at a distance of 528.82 meters from INS Trata, the Defence Establishment mentioned in the New Defence Circular. The Petitioner submitted the said report with the Executive Engineer Building Permission (EE-BP) Cell for its consideration, while dealing with the Petitioner's proposal. Also the IRS Chennai's findings as recorded in the said report were accepted by the EE- BP Cell, Respondent No. 2 herein.

8. On such conspectus, it is necessary to briefly set out the regulatory position governing constructions in the vicinity of defence establishments which has evolved over time. While the Works of Defence Act, 1903 provides for imposition of statutory restrictions through notified declarations, in cases where no such notifications exist, the Ministry of Defence issued executive guidelines from time to time. Circular dated 18th May, 2011, as modified on 18th March, 2015 and 17th November, 2015, *inter alia*, prescribed a requirement of obtaining NOC for constructions within specified distances, in certain cases up to 500 meters. These guidelines were later clarified by letter dated 4th April, 2016 issued



by the Hon'ble Defence Minister to the Hon'ble Chief Minister of Maharashtra, 2026:BHC-OS:11560- stating that in the absence of a response from the Local Military Authority (LMA), it shall be a deemed no objection, and that the final decision rests with the State Government or municipal authority. The said guidelines were thereafter superseded by circular dated 23rd December, 2022, which restricted the NOC requirement to constructions within 50 meters of specified defence establishments. However, the said circular was kept in abeyance by a further circular dated 23rd February, 2023. Consequently, it is contended that presently no operative circular or executive guideline governs the requirement of NOC in respect of constructions beyond the scope of statutory enactments.

9. Thereafter, the petitioner proposed to construct two buildings on the said Land viz., a rehab building containing residential units for re-accommodation of members of Respondent No. 4 – society and a “sale building” containing residential/non-residential units for sale in the open market.

10. The Petitioner accordingly submitted its proposal dated 17 June 2022 to the EE-BP Cell, which was approved and an Intimation of Approval (IOA) dated 26 July 2022 was granted. Thereafter, the Petitioner executed agreements with all 72 members of Respondent No.4, and shifted them to transit accommodation between September, 2022 and November, 2022 by paying the agreed amount of transit rent and other charges, and demolished the old building.

11. Upon compliance with IOA conditions, the Petitioner applied to the Executive Engineer (EE), Building Permission Cell for Commencement



Certificate (CC) and which was granted on 3 February 2023 to the petitioner to carry out the work of shore piling.

12. It is contended by the petitioners that the Commencement Certificate did not mandate obtaining permission from the Defence Establishment, as even Respondent Nos.1 and 2 were aware that under the New Defence Circular, the requirement of an NOC was only for construction within 50 meters, whereas the construction in the present case, according to the petitioner, is beyond 50 meters (it was at 528.02 meters). Respondent Nos.1 and 2, therefore, consciously and knowingly did not impose any such condition for obtaining an NOC from the Defence Establishment for construction on the said Land.

13. In the meanwhile, the Petitioner completed the shore piling work and the Executive Engineer, Building Permission Cell, by his letter dated 12 April 2023, granted Commencement Certificate for the work up to the top of stilt level for the rehab building and up to the 6th level podium for the sale building. The Petitioner completed the rehab building up to the top of stilt level in or around the end of November, 2023 and thereafter, vide its architect's application dated 29th November, 2023 submitted on 6th December, 2023, applied for further Commencement Certificate upto the terrace top.

14. It is the petitioner's case that the Executive Engineer, Building Permission Cell, for no reason, abstained from processing the application as per the procedure under Regulation No. 11(4) of the Development Control and Promotion Regulations for Greater Mumbai, 2034 (for short 'DCPR 2034') and



kept the same pending beyond the statutory period of 15 days despite follow-ups. 2026:BHC-OS:11560-

The petitioner contends that under Regulation No.11(4) of the DCPR 2034, further Commencement Certificate was deemed to have been granted on 21st December, 2023, upon expiry of 15 days from 6th December, 2023, and accordingly, the Petitioner's architect, by letter dated 21 December, 2023, confirmed compliance and requested permission to proceed further.

15. It is thus the petitioner's case that, a statutory right had accrued in the Petitioner's favour to carry on further work of the rehab building from 21 December 2023; however, to avoid any frictions and complexities, the petitioner further awaited formal grant of a Commencement Certificate. As the work remained standstill causing delay in rehabilitation of 72 families, Respondent No.4, by letter dated 11th January, 2024 (served on 12th January, 2024), requested early grant of further Commencement Certificate up to terrace top.

16. After keeping the application pending for more than two months, the Executive Engineer, Building Permission Cell, on 9th February, 2024, purported to reject the further Commencement Certificate for the rehab building for undisclosed reasons. It is contended by the petitioner that as the said rejection note did not record any reasons, the same is non-est and of no effect in law in view of Regulation No. 11(4).

17. The Petitioner, without prejudice to the rights under Regulation No. 11(4), submitted a fresh application on 12th February, 2024 for further Commencement Certificate for the rehab building, as recorded in the EE-BP



Cell's note-sheet dated 9th February, 2024. However, the EE-BP Cell neither inspected the work nor communicated any decision within 15 days, and accordingly, further Commencement Certificate stood deemed to have been granted on 27th February, 2024.

18. The Petitioner in such circumstances on 5 March 2024, approached this court by filing Writ Petition No. 1437 of 2024 praying for necessary directions. In such proceedings, Respondent Nos.1 and 2 made a statement before this Court that the Petitioner's application shall be decided within 15 days from 20 March 2024 and accordingly the proceedings were posted to 15th April, 2024. Pursuant thereto, Respondent Nos.1 and 2 processed the application and granted further Commencement Certificate on 5 April, 2024, for full rehab construction, in view of which the said petition was disposed of by an order dated 15th April, 2024. It is the petitioner's case that on none of these occasions did Respondent Nos.1 and 2 insist on obtaining any NOC from Naval authorities and in fact granted permissions from time to time.

19. Thereafter, pursuant to the Petitioner's application, further Commencement Certificate up to the 21st floor of the sale building was granted by Respondent No.1 by its letter dated 30 May 2024, and by a communication dated 3rd October, 2024, Respondent No.1 approved the amended plan submitted by the Petitioner. Respondent No.1 thereafter granted further Commencement Certificate for undertaking construction of one additional floor in the rehab building by its communication dated 23rd October, 2024, and on the Petitioner's application, an amended IOA was issued on 25th February, 2025.



20. It is the petitioner's case that Respondent No.2, however by a communication dated 14th July, 2025, informed the Petitioner that the Naval Officers had instructed Respondent No.1 to issue a "stop work notice" in respect of the construction on the said land and called upon the Petitioner to furnish its say.

21. The Petitioner, by its letter dated 14th July, 2025, responded to the said communication, specifically pointing out, that at the time of grant of Commencement Certificate (CC), the applicable new Defence Circular dated 23 December 2022 required permission only for construction within 50 meters of the Defence Establishment and, as the present construction is beyond such distance, no NOC from Naval authorities was required, and raised other objections. Respondent No.1, being satisfied with the Petitioner's response, issued full Commencement Certificate on 11th August, 2025 even for the sale building without insisting on obtaining any NOC from Naval authorities.

22. Thereafter, the Petitioner completed construction of the entire rehab building and made an application on 28th August, 2025 for grant of Occupation Certificate. The said application came to be rejected on 10th October, 2025 on certain technical compliances, none of which pertained to any requirement of obtaining a Naval NOC. The Petitioner complied with the said objections and re-submitted the application on 16th October, 2025; however, on 29th October, 2025, for the first time, Respondent No.1 rejected the application on the ground that an NOC from Naval authorities was required.



23. However, despite the above, Respondent No.1, by its communication^{2026:BHC-OS:11560-} dated 24th October, 2025 (a copy whereof was received by the Petitioner on 28 October 2025), issued the impugned communication on the ground that the Petitioner had not obtained a Naval NOC. The said communication referred to a letter dated 2nd September, 2025 addressed by Respondent No.3 to Respondent No.1, however, although it was stated to be enclosed, the same was not furnished to the Petitioner. The Petitioner was therefore constrained to immediately respond by its letter dated 28th October, 2025, *inter alia* calling upon Respondent No.1 to provide a copy of the said communication.

24. In response thereto, Respondent No.1 did not furnish a copy of the letter dated 2nd September, 2025. The Petitioner was therefore constrained to obtain the same under the provisions of the Right to Information Act, 2005. Accordingly, the Petitioner made an application seeking copies of communications exchanged between Respondent Nos.1 to 3 and obtained the relevant documents from Respondent No.1.

25. On perusal of the said documents, the Petitioner learnt that Respondent No.3 had, even prior to 2nd September, 2025, i.e. in or around November–December 2023, objected to the construction activities and had called upon Respondent No.1 to issue a stop work notice; however, Respondent No.1, by its letter dated 18th December, 2023, refused to do so. It was further revealed that pursuant to the communication dated 2nd September, 2025, a joint meeting was held between Respondent Nos.1 and 3 on 7th October, 2025, wherein the Vice President and the Chief Officer of respondent No.1 informed that issuance of a



stop work notice would amount to contempt of this Court's orders, nonetheless, 2026:BHC-OS:11560-

Respondent No.1 proceeded to issue the impugned communication.

26. It is the petitioner's case that by issuance of the impugned stop work notice, Respondent Nos.1 and 2 have clearly disclosed their intention not to grant Occupation Certificate in respect of the rehab building and/or to process any further development permissions for the sale building, rendering it futile for the Petitioner to request the Respondents to act in accordance with law and discharge their statutory duties under the Maharashtra Regional and Town Planning Act, 1966 read with the Development Control Regulations, 2034.

27. In the aforesaid circumstances, the Petitioner has filed the present petition praying for the following substantive reliefs:

"a. Issue a writ of Certiorari and/or a writ in the nature of Certiorari and/or any other appropriate order, writ or direction under Article 226 of the Constitution of India, calling for the records leading upto the issuance of the Impugned Stop Work Notice dated 24 October, 2025 (at Exhibit W) and after examining its legality and/or propriety thereof, be pleased to quash and set aside the same;

b. Issue a writ of mandamus and/or a writ in the nature of mandamus and/or any other appropriate writ, order or direction directing the Respondents, particularly Respondent Nos.1 and 2 to grant occupation certificate in respect of the rehab building being constructed on the said land and to further process, decide and grant all applications for planning permission made by the Petitioners in respect of the said land without insisting upon any permission or NOC from the Defence Authorities under the Defence Circulars issued by the Ministry of Defence dated 18 May 2011 (Exhibit A), 18 March 2015 (Exhibit A-1), 17 November 2015 (Exhibit A-2) and/or 23 December 2022 (Exhibit A-4), 4 April 2016 (Exhibit A-3) and 23 February 2023 (Exhibit A-5);

c. Declare that the circulars issued by the Ministry of Defence dated 18 May 2011 (Exhibit A), 18 March 2015 (Exhibit A-1), 17 November 2015 (Exhibit A-2) and 23 December 2022 (Exhibit A-4), 4 April 2016 (Exhibit A-3), 23 February 2023 (Exhibit A-5) and impugned stop work notice dated 24 October 2025 (Exhibit W) are ultra vires and unconstitutional and violative of Articles 14, 19(1)(g), 73 and 300A of the Constitution of India and to further quash and set aside the same."



Reply Affidavit on behalf of Respondent No.3 (Navy)

28. On behalf of respondent no.3/Navy, reply affidavit of Rear Admiral Sundeep K. Verma is filed *inter alia* contending that Stop Work Notice issued by MHADA has been rightly issued. It is contended that the objections raised by the petitioner are misconceived, factually incorrect and legally not tenable. It is next contended that the redevelopment of residential building no.41 of Worli Adarsh Nagar, MHADA layout bearing C. S. No. 209 (Part), i.e. the project in question, undertaken by the petitioner, was progressing without accord of NOC from the Indian Navy, which was mandatory for any multistoried construction within 500 metres of a Defence Establishment, namely, INS Trata. It is contended that the requirement of Defence NOC was not discretionary but a mandate under the DCPR 2034, Regulation No. 59 Appendix III at Serial no. 5, which specifically lists “Ministry of Defence/Armed Forces – Near Defence Area/Establishment” as requiring NOC.

29. It is next contended that the construction activity was undertaken by the petitioner without obtaining such mandatory NOC, despite repeated objections raised by LMA/INS Trata since 05 October 2023 and subsequent written communications dated 06 November 2023 and 22 November 2023 addressed to the MHADA. It is thus the case of the Navy that in the absence of NOC and in view of continuing security violations, MHADA has correctly issued the Stop Work Notice dated 24 October 2025 (received by the petitioner on 28 October, 2025). It is next contended that the refusal to process further permissions or Occupation Certificate until security compliance is ensured is compelled by law,



municipal regulations and national security consideration.

30. Insofar as the petitioner's challenge to the constitutional validity of the circulars issued by the Ministry of Defence (MoD) is concerned, it is submitted that the challenge is not tenable, as the cases of granting NOC for construction near defence establishments are governed by Government of India/Ministry of Defence letter No. 11026/2/2011/D(Lands) dated 18 May 2011, 18 March 2015 and 17 November 2015. It is next contended that such circulars remain in force since Government of India/MoD's letter dated 23 December 2022 have been held in abeyance by GoI/MoD's letter dated 23 February 2023.

31. It is next contended that the Supreme Court by its order dated 22 January 2024 in SLP (C) No. 28519/2023 (Union of India vs. Dolby Builders), has expressly restored the applicability of the MoD circulars dated 18 May 2011, 18 March 2015 and 17 November 2015. For such reasons, the petitioner's contention that the circulars are invalid, inapplicable or unconstitutional is untenable.

32. It is submitted that the MoD circulars do not expropriate property, and considering the significance of the defence establishment whichever conditions are necessary and required may be imposed. It is contended that the MoD circulars merely prescribe a requirement of NOC for security reasons in proximity to defence establishments and that such circulars operate in tandem with DCPR 2034, which independently mandate NOC from defence authorities for constructions near defence areas. The petitioner's fundamental rights under



Articles 14, 19(1)(g) and 300A of the Constitution of India are not violated in any manner. 2026:BHC-OS:11560-

33. It is next contended that Article 14 does not confer a right to parity in illegality, and the petitioner cannot rely on any past constructions or permissions granted without NOC to justify present non compliance. It is contended that development permissions, including Commencement Certificates are expressly conditional and revocable in case of misrepresentation or violation of statutory requirements. It is also contended that earlier permissions do not create an absolute right where construction is statutorily non compliant and within a restricted security zone.

34. Insofar as the petitioner's case that the project is beyond 500 metres is stated to be factually not correct. The report of IRS Chennai contends that IRS Chennai used coordinates from Site I of INS Trata and declared 528.82 meters as the shortest distance at approx. 280 Mtrs. but failed to consider Site II, which is the actual shortest point. It is contended that INS Trata/LMA had consistently informed MHADA that the actual shortest distance from Site II is approximately 280 meters, bringing the project well within the 500 meter security radius. It is hence contended that IRS Chennai is neither the competent authority nor an expert in assessing security aspects as also is unaware of the geographical layout of the Defence Establishment. For such reasons, it is contended that the report of IRS Chennai is factually flawed and cannot bind Defence Authorities on security matters. It is contended that once the correct distance is considered, the project squarely falls within the mandatory NOC requirement under the MoD circulars.



35. Respondent no.3 has next contended that the petitioner's assertion that the Stop Work Notice is arbitrary or contrary to earlier proceedings is also not correct. It is stated that Writ Petition No. 1437 of 2024 was filed only because MHADA did not grant further Commencement Certificate in time, and that the Navy was never added as a respondent in the said petition. It is contended that therefore, the reliefs, as prayed for in the said writ petition, did not relate to respondent no.3 and/or in regard to Naval NOC or distance from INS Trata. Thus, the disposal of the said writ petition does not create any legal bar against MHADA or Defence Authorities acting on continuing security violations.

36. It is further contended that the petitioner has continued with the construction, which according to respondent no.3 is unauthorized as the same is undertaken being aware that no NOC is obtained as per law from defence authorities and in this regard an explanation was sought in the month of July 2025 by MHADA.

37. Respondent no.3 has asserted that the requirement of obtaining a No Objection Certificate (NOC) arises solely from the standpoint of national security assessment. It is not a restriction on constitutional rights, nor does it amount to any form of compulsory acquisition or deprivation of property. In such context, it is contended that the purpose of the NOC mechanism is limited and clearly defined to enable the competent security authorities, to examine whether a proposed construction creates a direct line-of-sight issue, surveillance vulnerability, or any other potential threat to a defence establishment. It is contended that an NOC may be granted once the assessment concludes that the



proposed building does not compromise the security of the defence installation^{2026:BHC-OS:11560-} and in the event if the assessment identifies a genuine and demonstrable security concern, the authorities are empowered to impose reasonable restrictions strictly to the extent necessary to safeguard national security. Therefore, the Ministry of Defence (MoD) circulars do not expropriate any individual of their property, nor they do interfere with ownership or development rights beyond what is essential for security. It is contended that the objective is not to regulate land use in general, but to ensure that construction activities in the vicinity of sensitive defence establishments do not create vulnerabilities that could compromise national security interests. It is contended that the circulars operate as precautionary, protective measures and must be understood in the limited context. It is therefore contended that the Stop Work Notice dated 24 October 2025 (received by the petitioner on 28 October, 2025) is legal, valid and justified as also the MoD circulars are constitutionally valid.

38. Insofar as the petitioner's case that several other constructions existed which are not being granted NOC by the Navy, the following averments are made in paragraph 11.46 of the reply affidavit, the contents of which are required to be noted which read thus:-

11.46. With reference to Ground II & JJ, I say and submit that the petitioner has omitted mention of the year of construction or ongoing court cases (Harisiddhi Heights). The high-rise buildings mentioned by the petitioner existed prior to 2011, i.e., prior to issuance of the GoI/MoD guidelines. GoI/MoD letter dated 18 March 2015 stipulates that NOC from LMA/Defence Establishment is not required for constructions for which permission had been issued by the competent municipal authority prior to 18 May 2011. Further, several of the high-rise buildings are well beyond 500 m from the boundary wall of INS Trata. The petitioner has vaguely asserted that these buildings were permitted without NOC. Article 14 does not confer a right to parity in illegality. The petitioner is at liberty to submit an NOC



proposal with revised configuration within extant guidelines. Therefore, the petitioner's fundamental right to equality under Article 14 of the Constitution of India is nowhere violated.

Sr No..	Name of Building	Status
01	Harsidhi Heights	NOC not issued
02	Godrej bay	NOC issued on 01 Feb 95
03	Amar Nagar CHS	NOC issued vide HQWNC letter WK/3039/44 dated 13 Nov 09
04	Prerna	NOC issued vide HQWNC letter WK/3031/NOC/57 dated 31 Oct 17
05	Shadlya Terrace Stilt	NOC issued vide HQWNC letter WK/3033-2/22 dated 14 Jun 16
06	Sea Face CHS	Details of NOC not held.
07	Surana Regency	
08	New Sea Link CHS	
09	Hermes house	
10	Pratiksha	
11	Redrose apartments	
12	Priya Building	
13	Sportsfrild	
14	Suraiya Apartment	
15	Raheja Legends	
16	Vrindavan CHS Ltd. CS No.207 & 208 (pt)	NOC recommended by HQWNC on 11 Sep. 2007 for height 69.96mtr. And denied for the height 148.13 meter by HQWNC 21 Aug 18. The builder re-approached for NOC for amended height 183.6 m. which is not recommended by the Unit as it would have had direct line of sight to infrastructure of INS Trata. As per the directives issued by Chief Security during the CMLC Conference, a bilateral discursion was conducted between the official from BLC and Indian Navy on 10 Jul 25 at 1500 hours in the Chamber of Dy. Chief Eng. (BP) City Office. During the meeting Chief Engineer, BMC acknowledged the concerned raised by IN side, but stated that he would need to consult the BMC Commissioner again before providing any further response. The Unit reapproach BMC Wadala Office on 13 Nov. 25. However, the Executive Engineer stated that the case has been sent to Municipal Commissioner for remarks. BMC will revert back to unit within 10 days. Reply



		from BMC is still awaited.
17	Shiv Shashi CHS and Shiv Prerna CHS CS No.999(pt)	NOC recommended by HQWNC on 05 Aug 15 without mentioning height. The original height proposed by builders was of single building having 2 wings i.e. Wing – A of height 66.55 m. for rehabilitation and Wing – B of height 58.17 m. for sale.
18.	M/s.Dolby Builders Plot No.49 CS No.775	NOC was accorded in Jan 24 for the reconstruction of G + 05 building with 15 mtr. Height as per Hon'ble Supreme Court orders.
19	SRA Scheme Building Adarsh Nagar C.S.No.5(pt) & 15(pt) – Sagar Darshan	SRA office vide its letter SRA/ENG/DESK/OW/GS/5960 dtd. 12 Feb 25 indicated that it has commenced work on the building as per height indicated in the NOC letter issued by HQWNC letter WK/3031/NOC/22/19 dated 03 Jun 17
20	Indraprastha CHSL Bldg.No.41 (Aakasa) CS No.209 (pt)	NOC not recommended view building falls within 500m of Trata and proposal for stop work notice forwarded to MHADA. INS Trata forwarded letters 624/WK/NOC/209(pt) dt. 23 Jun 25 Work Notice and submitted. Hon'ble Supreme Court order dated 22 Jun 24. A joint meeting was held at MHADA office in the Chairmanship of Hon'ble VP & CEO MHADA on 7 Oct 25. No further construction work at the site has been observed and the unit is continuously work.
21	M/s.SSV Developers CS No.208(pt) & 209(pt)	NOC not recommended view within 500m of Trata by HQWNC on 29 Jan 19, no construction activity has been observed.
22	Shiv Kiran CHS	NOC was not recommended view within 500m of Trata by HQWNC on 11 Mar 21, and stop work notice was issued by MHADA. However, Hon'ble High Court of Bombay pronounced judgment in favour of the building on 05 Jan 24.
23	Harsiddhi Heights CS No.208	NOC not recommended view within 500m of Trata and no new activity has been spotted.
24	Redevelopment of College building 5(pt) and 209(pt)	Revised NOC for 51.95 mtr. Height regretted by HQWNC on 05 July 22. NOC has been given for the height of 25.10 mtr. On 18 Jun 14.
25	Matruchhaya Bldg. No.42, 15(pt) & 16(pt)	Earlier NOC was regretted by HQWNC on 12 Jun 24. MHADA reapproached HQWNC to continue NOC for existing proposal on 23 July 25. INS Trata carried out security assessment on directives of Hqs



		& NOC was not recommended i.a.w. extant MoD guidelines
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39. It is, however, submitted that the petition ought not to be entertained and needs to be dismissed.

Submissions on behalf of the Petitioner

40. Mr. Ravi Kadam, learned Senior Counsel appearing for the petitioner has made the following submissions:

- i. At the outset, it is submitted that this petition impugns the stop work notice dated 24 October 2025 issued by MHADA on the basis of respondent No.3's communication dated 23 June 2025 that the petitioner's development is within 500 meters of INS Trata II and the petitioner is bound to apply for and obtain a defence NOC under the Circulars dated 18 May 2011, 18 March 2015, 23 December 2022. It is submitted that the petition needs to succeed on several grounds inasmuch as the construction which has been undertaken by the petitioner is legal and valid and after obtaining due permission from the municipal corporation. It is submitted that the petitioner had applied for Occupation Certificate for the rehabilitation unit which is a complete as also valid construction and the sale wing is constructed upto 31/34 floors and which is also substantially completed. It is submitted that on a totally untenable premise the petitioner is foisted with the demand of obtaining NOC from the defence authority. It is submitted that such insistence foisted on the petitioner is also contrary to the circulars issued by respondent No.3.



ii. It is next submitted that the actions of respondent No.3 are arbitrary looked from any angle for the reason that respondent No.3 is guilty of “pick and choose” approach in implementing the 2011, 2015 Circulars that is arbitrary, capricious and violative of Article 14 of the Constitution.

iii. It is submitted that respondent No.3’s demand for NOC is premised on the erstwhile 2011, 2015 circulars which were superseded by 23 December 2023 circular, which no longer exist in the eyes of law inasmuch as the petitioner’s rights to undertake constructions have stood crystallized under the 2023 circular under which it has completed the construction.

iv. In supporting such contentions, Mr. Kadam has submitted that this Court by its order dated 8 December 2025 had directed respondent No.3 to file a reply setting out a clear statement in regard to the existing building, the date of their construction, and whether any action has been taken in respect of these buildings which are situated within 50 meters to 500 meters. However, respondent No.3, despite clear orders, has not complied with the said direction to list out all existing buildings which are situated within 50 meters to 500 meters radius as directed by the Court and the details of the action taken against them.

v. Respondent No.3 has only answered the charge qua the non-exhaustive list of buildings identified by the petitioner in Ground 11 (Page



66 of the Petition) and that too, answered the same only with respect to some of the buildings mentioned in the list. It is thus submitted that an adverse inference ought to be drawn against respondent No.3 that it adopts a 'pick and choose' approach in enforcing the impugned circulars, which is wholly arbitrary and capricious under Article 14 of the Constitution. The adverse inference is further borne out by the factual situation wherein the maps establish that several high-rise buildings have come up around INS Trata. Referring to the circular dated 18 May 2011 relied upon by respondent No.3 it is stated that it lays down that the Station Commander must take an objection, a position borne out from the words "*Where the local municipal laws do not so require, yet the Station Commander feels.....*" It is therefore, submitted that the entire onus is on the Station Commander to pro-actively enforce the circulars, and not the other way around, irrespective of whether the distance of 50 mtrs. as per the circular dated 23 December 2022 or 500 mtrs as per the circular dated 18 May 2011.

vi. In the context of the petitioner's case on respondent No.3's approach of 'pick and choose', which according to the petitioner, has also been noticed by this Court in the **Shivaji Nagar Shivkiran Co-op. Hsg. Society Ltd. & Anr. Vs. MHADA & Ors.**², as decided by the co-ordinate Bench of this Court which has attained finality since no challenge is preferred to the same, needs to be considered as squarely applicable in the

² Writ Petition No.1215 of 2023



present context. It is submitted that qua the non-exhaustive list of buildings around INS Trata tabulated in Ground II of the Petition, would stand admitted by respondent No.3 as having an arbitrary pick and choose approach in giving NOC to some and not enforced the circulars against others. In consequence thereto, it is clear that respondent No.3 objected to some constructions but did not object to others, despite all of them being within the defence radius, and despite some buildings being much closer than others. It is, hence, submitted that even the application of the circulars was inconsistent and uneven. Further, respondent No. 3 has not even answered the petitioner's case as to why one building, namely "Shandilya Terrace" was granted an NOC despite being right next to INS Trata. It is stated that the selective conduct of respondent No. 3 is further buttressed by the petitioner having named buildings such as "Oberoi 360" and "Marina Bay", wherein the proposed construction was well over 30 floors, yet, respondent No. 3 has kept silent on these constructions in its affidavit. It is submitted that this supports the petitioner's contention that respondent No.3 simply applies the circulars in a discriminatory fashion and chooses to turn a blind eye to some.

vii. It is next submitted that this Court in **Shivaji Nagar Shivkiran CHS & Aut. v. MHADA & Ors.** (supra) has itself taken a judicial notice of respondent No. 3's 'pick and choose' approach in implementing the circulars in respect of construction carried out within 500 meters of INS Trata. In such case respondent No.3 objected to the development qua



proximity to INS Trata II. Even in that case, the Court identified a list of buildings around INS Trata and in respect of which it held that respondent No.3 had taken a 'pick and choose' approach which is violative of Article 14. It is on such grounds, the Court was satisfied that respondent No.3 had acted in an arbitrary and capricious manner and made the petition absolute. Referring to the decision in **B.K. Ravichandra & Ors. vs. Union of India & Ors.**³, it is contended that respondent No.3's arbitrary approach in implementation of the circulars is violative of Article 14 of the Constitution and applying the principles as laid down by the Supreme Court, it would not be open to the State to claim that the law can be ignored, or complied at its convenience.

viii. It is submitted that the case of respondent No.3 that the mandate to obtain NOC flows from Regulation 59 of DCPR 2034 is fallacious and incorrect, since the twin conditions for NOC laid down in Appendix III, Sr.No.5 to its defence, are not satisfied. It is submitted that this Court has already pronounced in **Dolby Builders Private Limited vs. Municipal Corporation of Greater Mumbai & Ors.**⁴, on the validity of the circulars which were quashed and set aside, which according to the petitioner, is squarely applicable to the facts of this case. It is submitted that the ratio in the said case was reaffirmed in the case of **Union of India vs. State of Maharashtra & Ors.**⁵

3 (2021) 14 SCC 703 para 35)

4 (2023) 2 HCC (Bom.) 382

5 Writ Petition No. 3145 of 2021



ix. It is next submitted that respondent No.3's demand for NOC is premised on the erstwhile 2011, 2015 Circulars which were superseded by the 23 December 2022 Circular, and hence the said circulars on the basis of which the demand for NOC is being made no longer exists in the eyes of law. In such context it is submitted that respondent No.3's contention that the erstwhile 2011, 2015 and 2016 Circulars remain in force by virtue of the 23 December 2022 Circular having been kept in abeyance by the 23 February 2023 circular, is untenable on several grounds. It is submitted that the erstwhile circulars are the highest executive instructions which could be substituted at any time and it is so happened in the case of the said circulars of 2011, 2015 and 2016, as the December 2022 circular expressly cited the erstwhile circulars and stated that it was issued in supersession of the same. It is submitted that the supersession thus took effect instantly upon the issuance of the December 2022 circular, and the repeal/ supersession of the erstwhile circulars came into effect at once and they thus no longer existed in the eyes of law. For such reason, the supersession was also in force from 22 December 2022. It is submitted that as a consequence thereto, the *post facto* abeyance of the 23 December 2022 circular, by the 23 February 2023 circular makes no difference since the supersession/repeal of the erstwhile circulars had already taken effect and hence, abeyance of a superseding circular does not revive the earlier circular.

x. It is submitted that repeal/quashing of the December 2022



circulars much less an "abeyance" of the same will not revive the 2026:BHC-OS:11560-
repealed/superseded circulars. In supporting such contention, reliance is
placed on the decisions in the case **State of Uttar Pradesh & Ors. vs. Hirendra Pal Singh & Ors.**⁶; **Joint Action Committee of Air Line Pilots & Ors. v DGCA & Ors.**⁷; **Brihanmumbai Mahanagarpalika & Ors. vs. Secretary, Bar Council of Maharashtra and Goa & Anr.**⁸. It is hence submitted that there is no question of respondent No.3 demanding NOC basing on the circulars which no longer exist in law.

xi. Mr. Kadam would submit that independent of the aforesaid position in law, the petitioner has a crystallized right under the 23 December 2022 circular to complete its construction. This for the reason that the petitioner was granted a Commencement Certificate for shore piling on 3 February 2023 whilst the 23 December 2022 circular was in effect. It is submitted that this is also confirmed by the respondents in the Minutes of Meeting dated 20 October 2025 wherein the discussion recorded therein confirms that MHADA had issued the first Commencement Certificate in view of the 23 December 2022 circular being in force and which prescribed a radius of 50 meters from INS Trata II. It is submitted that the effect of this grant entails a crystallisation of the petitioner's rights which now cannot be set at naught. Such submission is supported by placing reliance on the decision of the Supreme Court in

6 (2011) 5 SCC 305

7 (2011) 5 SCC 435

8 (2012) 6 Mah LJ 407



Goan Real Estate and Construction Ltd. & Anr. vs. Union of India,^{2026:BHC-OS:11560-}
through Secretary, Ministry of Environment and Ors.⁹

xii. In such context it is submitted that in **Shivaji Nagar Shivkiran Co-operative Housing Society Ltd. & Anr. vs. Maharashtra Housing and Area Development Authority & Ors.**¹⁰, the Petitioners were also granted development permission for plinth on 5 January 2023 whilst the regime under the 23 December 2022 circular was in force. The Court in such case has held that the petitioner's rights stood crystallized in the window between the 23 December 2022 Circular and it being kept in abeyance in February 2023 and it is held that such rights being crystallized could not now be undone. It is submitted that in the present case, the petitioner's crystallised right can also be appreciated from another perspective. Respondent No.3 wrote two letters dated 5 October 2023 and 22 November 2023 to the MHADA objecting to the construction. It is submitted that MHADA refuted these letters by a 18 December 2023 communication asserting that no NOC was required for the reasons therein. It is submitted that respondent No.3 thereafter did nothing for two years nor did it move the Court to enforce any claim. It is thus submitted that by such conduct, respondent No.3 accepted MHADA's stand and kept silent, whilst MHADA went on to issue "five Commencement Certificates" between 2023 to June 2025 and allowed the construction to progress. It is hence submitted that it was only in June

9 (2010) 5 SC 388

10 Writ Petition No. 1215 of 2023 decided on 5 January, 2024



2025 that respondent No.3 chose to object again by a letter dated 21 June 2026:BHC-OS:11560-2025. It is thus submitted that such facts clearly established that respondent No.3 accepted MHADA's stand and allowed the construction to progress, rendering it disentitled in law from now challenging petitioner's construction.

xiii. Mr. Kadam would submit that all these facts would clearly establish respondent No.3's capricious approach of acting at its own convenience, something deprecated in B. K. Ravichandra's case (supra).

xiv. The next submissions of Mr. Kadam is to the effect that respondent No.3's contention that the mandate to obtain its NOC flows from Regulation 59 of the DCPR 2034, is fallacious and untenable. In such context it is submitted that in paragraph 4 of the reply affidavit, respondent No.3 has taken a stand that "the requirement of Defence NOC is not discretionary but a mandate under DCPR 2034 Appendix III, Regulation 59, Serial No.5 which specifically lists "Ministry of Defence/ Armed Forces – Near Defence Area / Establishment". Such contention is untenable, as according to the petitioner, the affiant has mischievously paraphrased Appendix III Serial No.5 in a self-serving way and omitted portions of the same, as if it operates to confer unilateral authority with respondent no. 3 to grant a NOC.

xv. It is submitted that the words "as notified by Urban Development Department, GoM" have been omitted in the reply. It is submitted that



respondent No.3 has not even established that INS Trata-II has been notified by Urban Development Department, and hence this requirement does not apply.

xvi. It is submitted that it is settled law that the right of property under Article 300-A is a valuable right which cannot be blocked in an oblique and indirect fashion, and the law of development or town planning should be explicit about the nature and effect of the deprivation, expressing the intention to do so, as held by the Supreme Court in **B.K.Ravichandra Vs. Union of India** (supra). In such context it is submitted that Regulation 59 is a pointer to the legislative intent to be explicit on obtaining NOCs ‘*where necessary*’ qua defence that is where twin conditions are satisfied; *firstly*, required by the Defence authority around the defence installation; and *secondly*, as notified by Urban Development Department, Government of Maharashtra. According to the petitioner, these two conditions are cumulative since the law maker has used the conjunction ‘*and*’ instead of ‘*or*’. The second condition ‘*as notified by the Urban Development Department, GoM*’

xvii. It is next submitted that the second condition as notified by the “*Urban Development Department, Government of Maharashtra*” has not been shown to be satisfied by respondent No.3 and on this ground alone, respondent No.3's reliance on Regulation 59 must fail. It is submitted that even the condition “*Required by the Defence Authority around defence installation*” is also not made out. This is since INS Trata is not a notified



“*work of defence*’ under the Works of Defence Act, 1903. It is submitted that it is equally undisputed that the impugned circulars are not delegated legislation under that statute and/or authorised by that statute and further, the earlier circulars as impugned stand superseded by the Circular dated 23 December 2022. It is submitted that Regulation 59 is prefaced with the words “*wherever necessary*”, thus, in other words, there must be a mandatory obligation laid down by legislation and/or delegated legislation to obtain such an NOC in the specific facts pertaining to a construction site i.e. where required by law. This is further bolstered by the words in the latter portion of the clause, “*.....all the requirements of special NOCs, Laws and Regulations that are applicable from time to time.*” It is, hence, submitted that there is no legal requirement on the petitioner under Regulation 59 to obtain an NOC from Respondent No.3 in respect of petitioner's project.

xviii. In the aforesaid context, it is submitted that the contention as alleged by respondent No. 3 across the bar that the requirement to obtain an NOC falls within the ambit of clause 2(i) of the Circular dated 23 December 2022 since the municipal laws require the same is belied not only from the record but on a perusal of the provisions of law itself. In such case, it is submitted that, firstly, paragraph 2(i) of the 23 December 2022 circular commences with the words “*In places where local municipal laws require consultation with the Station Commander...*”. The submission is that there is no provision in law which requires such consultation and



therefore, there is no question of the case of respondent No. 3 falling within the ambit of paragraph 2(i) of the 23 December 2022 circular. Further also paragraph 2(ii) refers to Defence establishments at Annexure A wherein INS Trata appears at Sr. No. 10. Thus, the Defence Authority thereunder accepts that INS Trata falls in paragraph 2(ii). It is not even respondent No.3's case on record that the requirement of obtaining an NOC is as per clause 2(i) of the 23 December 2022 circular. This is also evident from the Minutes of the Meeting held between respondent No. 3 and MHADA dated 20 October 2025 which records respondent No. 3's contention that "*the previous circular is in effect for the project falls in 500 mtr. from Naval establishment shall have to obtain NOC from Naval establishment*". It is the petitioner's contention that this stand was also echoed in the letter dated 22 November 2023 addressed by respondent No. 3 to MHADA by virtue of which respondent No. 3 insists on issuance of a Stop Work Notice on the ground that the construction is within 500 meters from INS Trata II.

xix. It is submitted that on a perusal of the circulars, it is evident that the distance of 500 meters is found in clause 2(i) of the circular dated 18 May 2011 which was reduced to 50 meters in clause 2(ii) of the circular dated 23 December 2022. It is submitted that even on facts, it is not respondent No. 3's case that the requirement to obtain an NOC is found under clause 2(i) of the 18 May 2011 circular or the 23 December 2022 circular.



xx. The next contention of Mr. Kadam is that the reasoning of this Court in **Dolby Builders & Anr. vs. MCGM** (supra) which was affirmed in **Union of India vs. State of Maharashtra & Ors.**(supra) is squarely applicable to the facts of this case. In such context, it is submitted that in **Dolby Builders & Anr. Vs. MCGM**, the Division Bench of this Court held that the Impugned circulars of 18 May 2011, 18 March 2015, 17 November 2015 and 23 December 2022 circulars were ultra vires the Works of Defence Act. It is submitted that the Court in decision has held that the Works of Defence Act, 1903 was a complete code and that the circulars being in the nature of 'executive instructions' could not supplement the same. The Court held that such executive instructions are not "*law*" within the meaning of Article 300-A for restricting the right to property embedded therein. It is submitted that the Division Bench in the said decision has distinguished the judgments of the earlier benches in *TCI Industries, SSV Developers* and *Sunbeam Enterprises* by noting that the same had not considered the binding ratio of the law laid down by the Supreme Court in **B.K. Ravichandra case** (supra), **Satwaratna Coop Housing Society Ltd. v. BPCL**¹¹ and **T. Vijayalakshmi v. BDA**¹² which *inter alia* held that the right to develop property could not be indirectly curtailed without legislation.

It is submitted that in the **Dolby Builders & Anr. vs. MCGM** (supra) the Court has quashed and set aside the Circulars. Thus, it is submitted that

11 2022 SCC Online SC 703

12 (2006) 8 SCC 502



the said decision is submitted to be applicable in the facts of the present case and which would be one of the significant grounds on which the petition needs to be allowed.

xxi. Mr. Kadam would next submit that respondent No.3's self-serving interpretation of the Supreme Court's Order in **Union of India vs. Dolby Builders Pvt. Ltd.**¹³ is unacceptable and in fact belied by the record. In such context, respondent No.3's submission that the impugned circulars have been upheld by the Supreme Court of India in the matter of **Union of India v. Dolby Builders Pvt. Ltd.** (supra) needs to be rejected, as the Supreme Court has not, in fact, passed any such order. It is submitted that the Court in said case partly allowed the Appeal in the peculiar facts of the said case wherein the petitioners agreed not to press their plea qua the legality of the Circulars on the condition that the respondents grant a no objection to their redevelopment. It is submitted that it was on such basis the Appeal stood partly allowed and the matter stood disposed of virtually by consent. It is submitted that the Supreme Court did not delve on the merits of the party's case nor did it expressly overrule the judgment for others. Referring to the decision of this Court in **Indian Cork Mills Vs. State of Maharashtra**¹⁴, it is submitted that it would be necessary whether the Supreme Court in the said case decided the issue of the vires of the Impugned Circulars, whether they had force of law and/or the factum of they being superseded, and for such reason the interpretation as made by

13 Civil appeal arising out of SLP(C) No. 28519 of 2023

14 2018 SCC Online Bom 1214



respondent No.3 of the said decision needs to be rejected. It is thus submitted that the Court needs to apply the reasoning laid down in **Dolby Builders Pvt. Ltd.** (supra), which is sound in law and the reasoning in **Dolby Builders** (supra) was re-affirmed by this Court and applied in **Union of India v. State & Ors.** (supra). Further the decision in **Kappa Builders** has attained finality as the Special Leave Petition against the said decision of this Court was dismissed by the Supreme Court (SLP No.13483 of 2024) dated 23 October 2023.

xxii. Mr. Kadam accordingly would submit that the project in question was carried out in accordance with permissions granted by MHADA. It is submitted that the Circulars being used against the petitioner are now being superseded by the circular dated 23 December 2022. The petitioner has a crystallised right under the 23 December 2022 Circular by virtue of having been granted development permission and which cannot now be undone. It is further evident that respondent No.3 has adopted an arbitrary policy of 'pick and choose' and detailed submissions are made by the petitioner in making out its case that the such policy is violative of Article 14 of the Constitution.

xxiii. On merits it is submitted that the petitioner's project is substantially complete, with the rehab building awaiting grant of Occupation Certificate and the sale building being at 31/34 floors. It is submitted that it cannot be overlooked that there are tenants of 72 tenements languishing in transit accommodation for their redeveloped



flats and nearly 70% of the flats in the sale project have been sold. It is submitted that it is wholly inequitable for respondent No.3 to now object to the development of petitioner by insisting on the NOC. Mr. Kadam would submit that the petitioner has made out a strong case for grant of relief as prayed for and the petition be accordingly allowed.

Submissions on behalf of Respondent No.3

41. Mr. Govilkar, learned senior counsel for respondent no. 3 has made the following submissions:

At the outset, it is submitted that the construction of the petitioner on CTS No. 209(pt.), Aadarsh Nagar Layout, Worli, falls within a defence-sensitive zone of the Western Naval Command. It is submitted that the layout is in the immediate vicinity of multiple operational naval installations, namely, INS Trata (Site-II) active operational facilities where sensitive activities take place regularly. It is next submitted that the plot of Building no. 41 (Indraprastha CHS), being the site of the Cooperative Societies, lies within the broader security influence zone applicable to multistorey buildings around naval establishments and creates a direct and unobstructed line-of-sight into zones where defence-related activities are carried out. It is submitted that a high rise structure at this location provides a permanent elevated vantage point for visual surveillance, photography, electronic reconnaissance and pattern-mapping. This building would create continuous and perennial threat which cannot be neutralised.

42. It is next submitted that there are provisions under the Maharashtra Regional Town Planning Act, 1966 (for short “MRTP Act”) governing



development permissions, under which Section 44-46 thereof, the Planning Authority is required to consider the Development Plan, Development Control Regulations, public interest and all statutory restrictions. It is submitted that the public interest includes national security. It is submitted that Regulation 59 of DCPR 2034 would cast a duty upon the owner and developer mandating special purpose NOCs wherever necessary. It is submitted that Appendix-III thereof lists the Defence Authority at Sr. No. 5. The wording therein being "*as required by the Defence Authority around defence installations and as notified by the Urban Development Department*" are required to be read disjunctively, being two limbs that independently trigger the requirement of a Defence NOC. It is next submitted that the Ministry of Defence has issued several circulars regulating construction near defence establishments. In such context, reference is made to circular dated 18 May 2011, which lays down the guidelines for NOCs for buildings within 500 metres of defence establishments and empowers Station Commanders to object based on threat perception. It is submitted that circular dated 18 March 2015 introduced the "shadow and shield" concept and clarified treatment of pre-2011 permissions/construction. Further circular dated 17 November 2015 refined the guidelines without diluting the core principle that defence authorities may object to constructions compromising security.

43. It is next submitted that a fresh circular dated 23 December 2022 was later issued superseding the earlier circulars, in which according to respondent no. 3, two different situations were contemplated, firstly, in the places where local municipal laws requires consultation with Station Commander before approval of



building plan and secondly, where local municipal laws do not require yet Station 2026:BHC-OS:11560-
Commander feels that any construction coming up within 50 meter radius of
defence establishment would require NOC. These are two independent
circumstances and cannot be said to be overlapping. It is next submitted that the
circular of 2022 was placed "in abeyance" on 23 February 2023 as also this Court
in **Dolby Builders vs. Union of India** (supra) quashed the circulars, in case
involving reconstruction of a ground + 2 structure from the 1940. However the
said circular was brought back to life in the matter of **UOI Vs. Dolby Builders**
(supra) in which the Supreme Court gave a relief to Dolby builders in particular
and for others, the Court has left it open to challenge the vires of the said circular
and for such reason, the petitioner has challenged the vires of the said circular.

44. It is next submitted that once the superseding circular is placed in
abeyance, the earlier circulars revive by necessary implication. It is submitted that
in the event of circular being kept in abeyance, it is not just the contents of the
circular but also everything that flows from it including the supersession and its
effect. It is submitted that there cannot be any regulatory vacuum in regard to
national security, and there was none during the period of December 2022 to
February 2023. It is submitted that the MoD circulars are regulatory and not
adjudicatory as also the Supreme Court in **UOI Vs. Dolby Builders** (supra)
(supra) confirms that the circulars remain valid for all parties to challenge its vires
on subsequent date.

45. Insofar as the role of MHADA is concerned, it is submitted that the survey



remarks dated 27 September 2021 for CTS No. 209 expressly record that if the plot is affected by the safety clearance zone of an Army/Naval depot, specific remarks shall be obtained from the competent authority, and "NOC from Naval Dept." is listed as a required clearance. It is submitted that such survey remarks were communicated to the architect M/s Ketan Vaidya and Associates. It is submitted that the developer cannot rely on private satellite imagery or remote-sensing reports. It is submitted that the IRS report relied upon by the petitioner is exclusively on maps and Google Earth 2011, without physical survey, which ignores Site-II entirely. It is submitted that 528-metre distance from defence site is misleading and the actual distance from Site-II is approximately 280 metres which can be clearly seen from the map attached in the order passed by this Court in **Shivaji Nagar Shivkiran Co-operative Housing Society Ltd. Vs. MHADA & ors.**(supra)

46. It is submitted that the petitioner's allegation of 'pick and choose' is misconcieved and legally untenable. In such context, it is submitted that the Navy examines proposals only when they are formally forwarded by the Planning Authority (MCGM / MHADA) and that the Navy does not, and cannot, suo motu survey civilian areas or directly interact with private developers. The reason being its jurisdiction is triggered only upon receipt of a proposal through the statutory channel. This institutional limitation is inherent in the development-control framework under the MRTP Act and DCPR 2034. In such context, it is submitted that in the same layout, propsoal of Building No. 42 was duly forwarded by MHADA to the Navy, and the Navy refused NOC twice on



security grounds. This according to respondent no. 3 demonstrates that whenever a proposal is properly routed, the Navy applies uniform, consistent and security-driven standards. It is submitted that insofar Building No. 41 is concerned, there was no proposal forwarded by MHADA despite survey remarks mandating Naval NOC. Any differential outcome arises solely from MHADA's omission, not from any selective conduct on the part of the Navy.

47. It is next submitted that the Navy cannot "go around taking action" against developers. It is not a planning authority, nor does it have statutory power to inspect, stop, or regulate construction unless a proposal is placed before it. It is the exclusive responsibility of MHADA/MCGM to ensure that all mandatory NOCs, including Naval NOC, are obtained before granting development permission. For such reason, if MHADA fails to forward a proposal, the Navy cannot be faulted for not issuing an objection earlier. The petitioner's reliance on the existence of other buildings in the vicinity to allege discrimination is not the correct contention. Several buildings cited by the petitioner are pre-2011 structures, long predating the MoD Circular dated 18 May 2011. It is submitted that under the 2011 Circular, no NOC is required for pre-existing structures, and therefore the Navy had no occasion to examine or object to the same. In such context, it is submitted that many other buildings cited by the petitioner were granted NOC only because they satisfied the "Shadow and Shield" criteria, meaning thereby that they did not create a direct line-of-sight into sensitive naval assets. Such criterion has been consistently applied by Navy, which is expressly recognised in the MoD Circular dated 18 March 2015. It is also not clear that on



what grounds the petitioner is claiming parity when in the petition, no allegation of hostile discrimination as against similarly placed entities is made. Thus, merely naming few buildings without any allegations of wrongful grant of NOC is not sustainable. Further, without giving an opportunity to examine the proposal of the petitioner, the latter cannot allege the case of "pick and choose/discrimination." It is submitted that the Navy has, in fact, proactively objected to several buildings in the Worli-INS Trata belt whenever a security threat was perceived. However, in some cases, developers subsequently obtained permissions from the High Court or Supreme Court and construction continued pursuant to judicial orders (e.g., Dolby Builders). The Navy's objections in those cases were not withdrawn, they were overridden by judicial directions. Thus, the existence of such buildings cannot be treated as evidence of selective enforcement.

48. It is submitted that the Navy acts only when a proposal is forwarded, only when a security threat is perceived, and only within the statutory framework. The variation in outcomes is attributable to (i) MHADA's failure to forward certain proposals, (ii) pre-2011 legacy structures, (iii) buildings falling within "Shadow and Shield" protection, and (iv) judicial orders permitting construction despite Naval objections. None of these factors reflect arbitrariness on the part of the Navy. In fact, the Navy's conduct is consistent, uniform, and guided solely by national security considerations.

49. It is next submitted that the construction permission (commencement



certificates) were obtained in phases by the petitioner and substantial permissions were obtained after judgment of the Supreme Court in the matter of **UOI vs. Dolby Builders** (supra). In such context, it is submitted that the petitioner had applied for and secured the foundational development permissions including the DP Remarks dated 31 December 2020, the CRZ/distance certification dated 24 August 2021, and the Intimation of Approval dated 26 July 2022 at a time when the earlier Ministry of Defence circulars of 2011, 2015 and the 2016 clarification were in force, and well before the issuance of the MoD circular dated 23 December 2022. The Commencement Certificates thereafter were granted in stages, beginning with the Commencement Certificate for shore piling on 3 February, 2023 and the further Commencement Certificate on 12 April, 2023, both issued during the period when the 23 December, 2022 circular had been kept in abeyance on 23 February, 2023. It is submitted that subsequent Commencement Certificates including those dated 5 April, 2024, 30 May, 2024, 23 October, 2024 and 11 August, 2025 were all granted after the judgment of the Supreme Court in **UOI vs. Dolby** (supra), by which the earlier MoD circulars stood revived as it was made open to all the aggrieved person/entity to challenge the vires of the said circulars. It is submitted that consequently, all post-Dolby permissions necessarily attracted the requirement of a Naval NOC by operation of law. The petitioner has not applied for NOC, therefore, there cannot be any vested rights in favour of the petitioner to proceed with the construction. It is submitted that in any event, irrespective of the timing of permissions, any structure that provides a direct line-of-sight into a confidential defence



installation constitutes a serious and legitimate security concern, which cannot be diluted or taken lightly. 2026:BHC-OS:11560-

50. It is next submitted that there is no fault from the Navy, as Navy constantly followed up with MHADA. It is clear from the record that the Navy acted with consistency and diligence from the very outset. In such context, it is submitted that beginning with its first communication dated 5 October 2023, followed by further letters on 6 November 2023, 14 November 2023, and 22 November 2023, the Naval authorities repeatedly alerted MHADA to the security concerns of the petitioner's construction and informed that the construction is ongoing without any NOC from Navy. In this regard, it is submitted that continuous follow-up demonstrates that the Navy neither remained passive nor allowed any lapse to occur. It is submitted that even in the meeting held on 7 October, 2025, officers of Navy insisted that MHADA must issue a stop-work notice. For such reason, no allegation of negligence, delay, or dereliction of duty can be attributed to the Naval authorities, who have consistently acted to safeguard national security. It is submitted that the petitioner and MHADA, without performing their duties, cannot call upon respondent no. 3 to act beyond the scope of its powers.

51. Insofar as the legal submissions are concerned, it is submitted that in **Vikram Delite Co-operative Housing Society Ltd. v. Union of India**¹⁵, this Court had examined a redevelopment proposal situated approximately 375-421 metres

15 Writ Petition No. 3543 of 2018 decided on



from a Naval Armament Depot. The Local Military Authority (LMA) had refused NOC on the ground that the proposed structure created a direct line-of-sight into sensitive operational infrastructure. The observations as made by this Court that would go to show that the Navy is entitled to prevent any construction that provides an elevated vantage point into defence installations and that the right to property under Article 300A is subject to reasonable restrictions in public interest, including national security.

52. Referring to the decision of **Gorakhnath Shankar Nakhwa v. Municipal Corporation of Greater Mumbai**¹⁶ it is submitted that in the said case, the Court considered objections raised by Mazagon Dock Shipbuilders Ltd., a defence PSU, to high-rise construction in its vicinity, when it was held that planning authorities cannot ignore defence objections where security concerns are raised and that it would be appropriate to insist on defence clearance wherever defence sensitivity is recorded and that The Works of Defence Act, 1903 was not the only source of power for defence authorities, but the pending comprehensive amendments to the Act, the Ministry of Defence guidelines continue to operate and can be relied upon as observed in paragraph 120 of the judgment. Thus, the absence of a formal Section 3 declaration does not dilute the Navy's authority to object.

53. It is submitted that in **Dolby Builders Pvt. Ltd. vs. Municipal Corporation of Greater Mumbai**,(supra), the Bombay High Court has quashed the MoD circulars on the peculiar facts of the case, which involved reconstruction of a

16 Writ Petition No. 113 of 2019



Ground + 2 structure that had existed since the year 1940. The reasoning of the Court was on the petitioner's reconstructing the same height structure and that such decision would not apply to multi-storey buildings/redevelopment. It is submitted that the Supreme Court in **Union of India vs. Dolby Builders Pvt. Ltd.** (supra) clarified that the High Court's quashing of the circulars applies only inter parties, i.e., only to Dolby and that the Supreme Court did not hold that the circulars are invalid. The Supreme Court also did not affirm the High Court's reasoning, it merely limited the effect of the judgment to the parties before it. For such reasoning, the MoD circulars remain valid and enforceable for all cases except Dolby. Thus, the position in Dolby cannot be used by the petitioner to assert that the Navy is barred from objecting to construction near defence establishment in other cases.

54. In **Union of India through the Indian Army vs. State of Maharashtra through the Urban Development Department & Ors. (Adarsh case)**¹⁷, the Bombay High Court has held that when national interest is pitted against private interest, naturally, national interest must be protected as against private interest.

55. It is submitted that in **Ravindra Mutenja & Ors. vs. Municipal Corporation of Greater Mumbai & Ors.**¹⁸, this Court while relying on the decision in **Bombay Environmental Action Group vs. Bombay Municipal Corporation**¹⁹ in paragraph 38 held that illegalities will not be tolerated merely

17 2016 SCC OnLine Bom 2570

18 2003 SCC OnLine Bom 241

19 1995(2) Mh. L.J. 440



because someone is willing to offer payment in lieu of violating the law. It is therefore, submitted that the petition be dismissed. 2026:BHC-OS:11560-

Rejoinder submissions on behalf of the Petitioner

56. Mr. Kadam, learned senior counsel for the petitioner has made following submissions in rejoinder. The contention of respondent no. 3 that the circulars are legal, valid and binding is not correct, for the reason that the same are not delegated legislation under the Works of Defence Act, 1903 nor do they have any statutory force. At the highest, they are administrative instructions, which cannot affect rights under Article 300A of the Constitution. In any event, it is the petitioner's case that the circulars stand superseded by the circular dated 23 December, 2022. It is next submitted that respondent no. 3's contention that the petition is premature is also not correct and is without merit, the reason being that the building has already been completed, or in any event, is substantially completed and at no time prior thereto was any NOC demanded from the petitioner. It is submitted that where there is no legal requirement to obtain NOC, the question of thereafter seeking such NOC does not arise. Further, as a matter of fact, the record reflects that respondent no. 3 has already expressed its mind that an NOC is not recommended from a security point of view. It is next submitted that respondent nos. 3's contention, namely, it is not for the defence authorities to take objections but for applicants to approach them in each case, is belied by the circular of 2011, which makes it incumbent upon the Station Commander to object and for such reason, it is his obligation to do so. It is also



denied that respondent no. 3's contention that defence NOC is required under Regulation 59 is also misconceived, on which submissions are already made by the petitioner.

57. It is next submitted that the contention of respondent no. 3 that the situation in the present case is covered by Clause 2(i) of the Circular dated 23 December, 2022 is also incorrect and has been addressed by the petitioner. It is next submitted that respondent no. 3's contention that keeping of a circular in abeyance also keeps its supersession in abeyance is incorrect and contrary to law as laid down by the Supreme Court in **State of Uttar Pradesh & Ors. vs. Hirendra Pal Singh & Ors.** (supra), the decision in **Joint Action Committee of Airline Pilots Association of India & Ors. vs. D.G.C.A. & Ors.** (supra) and in **Brihanmumbai Mahanagarpalika & Anr. vs. Secretary, Bar Council of Maharashtra and Goa & Anr.** (supra)

58. It is next submitted that the reliance on the decision in **Gorakhnath Nakhua and Vikram Delite** (supra) is misconceived, as this judgment is clearly distinguishable. Also such judgment having not considered the legal position as laid down in **B.K. Ravichandra vs. Union of India** (supra) that the right to property under Article 300-A is a valuable right which cannot be blocked in an oblique and indirect fashion. Further, the law of development of town planning should be explicit about the nature and effect of the deprivation, expressing the intention to do so. Mr. Kadam, therefore, submitted that the petition needs to be allowed on such clear case of the petitioner.



Analysis and Conclusion

59. We have heard learned senior counsel for the parties. With their assistance, we have perused the record.

60. At the outset, the questions which arise for consideration of this Court in the present proceedings are to the following effect:-

- i) Whether in the facts and circumstances of the case, the insistence by respondent no. 3-Naval Authorities of a NOC in regard to the petitioner's construction is legal, valid and justified?
- ii) Whether the action of MHADA in granting Commencement Certificate from time to time permitting completion of the entire construction by the petitioner was legal and valid?
- iii) Whether the impugned stopwork notice dated 24 October, 2025 and the impugned communication dated 29 October, 2025 rejecting the petitioner's application for an Occupation Certificate on the ground of petitioner having not obtained NOC from respondent no. 3 are legal and valid?

61. To examine and answer the aforesaid questions, we refer to some of the basic facts which are not in dispute.

62. The petition concerns the redevelopment of Building No.41 in Maharashtra Housing and Area Development Authority (MHADA) layout at



C.S.No.209 (part) admeasuring 1601.25 sq.meters at Adarsh Nagar, Worli, 2026:BHC-OS:11560- which is owned by respondent No.4 – Prabhadevi Indraprastha Co-operative Housing Society Ltd. (for short ‘**the society**’). The MHADA is the lessee of the plot and the Municipal Corporation for Greater Mumbai (MCGM) is the owner of the plot.

63. The said building No.41 was constructed in the year 1953 to house 72 occupants and their families. In the year 1981 on 10 June 2009 the MHADA had executed a 99 year tenure sub-lease of the underlying land and a sale deed of the building in favour of respondent No.4’s co-operative society.

64. By the year 2022, the age of the building was about 69 years and it had become dilapidated by passage of time, hence, the building certainly required redevelopment. Accordingly, on 31 March 2022 a development agreement was entered between the petitioner and respondent No.4-society for redeveloping the said building. Also a Power of Attorney is executed in favour of the petitioner by respondent no.4 – co-operative society. On 26 June 2022 MHADA being a planning authority under the Maharashtra Regional Town Planning Act, issued an Intimation of Approval (IOA) on the plan submitted by the petitioner on one rehabilitation building and one cess building.

65. After receipt of the IOA (supra) between September 2022 to November 2022, building No.41 in question was demolished and all 72 members of respondent No.4 – co-operative society were shifted to transit accommodation. As on date, that is almost after four years, 72 members of the society are still



awaiting their rehabilitation. Thereafter, on 3 February 2023, the MHADA 2026:BHC-OS:11560- granted first Commencement Certificate to the petitioner for shore piling. In pursuance thereto, the petitioner commenced the work on 12 April 2023, and the consequent Commencement Certificate was granted by MHADA to the petitioner in pursuance of which the petitioner completed the work of rehabilitation building upto stilt and sixth level podium of the sale building.

66. Thereafter, the petitioner's application for further Commencement Certificate was not being decided by MHADA. The petitioner therefore approached this Court on 5 March 2024 by filing Writ Petition No.1437 of 2024 seeking direction to the MHADA to decide the pending application for further Commencement Certificate

67. On 20 March 2024, the MHADA made a statement before this Court that the MHADA would consider the petitioner's application for further Commencement Certificate within fifteen days. Consequent thereto on 5 April 2022, the MHADA granted third Commencement Certificate to the petitioner for construction of "full rehabilitation building". Consequent thereto on 15 April 2024, Writ Petition No.1437 of 2024 was disposed of by this Court in view of the MHADA's compliance.

68. On such backdrop, on 30 May 2024 the MHADA granted the petitioner the "fourth Commencement Certificate" for construction upto 21st floor of the "Sale building". Thereafter, on 23 October 2024, the MHADA granted "fifth Commencement Certificate" to the petitioner for construction of additional



floors for the rehabilitation building. On 25 February 2025, the MHADA issued **2026:BHC-OS:11560-** an amended IOA in favour of the petitioner.

69. It is at this juncture, the issue in regard to the NOC of respondent No.3 – Navy came to the light, as for the first time vide letter dated 14 July 2025 addressed by MHADA to the petitioner, the petitioner's say was called for in regard to the letter issued by respondent No.3 to the MHADA. The said letter addressed by the Commander, Work Officer of respondent No.3 to the Chief Engineer, MHADA is required to be noted which reads thus:

“INS Trata
Sir Pochkhanwala Road
Near RTO(E), Worli
Mumbai 400030

Quoting: 624/WK/NOC/209(PT) dated 23 Jun 25

The Chief Engineer
MHADA
Griha Nimman Bhavan
Kalanagar, Bandra (East)
Mumbai 400051

CONSTRUCTION ACTIVITY AT PROPERTY BEARING CS NO 209(PT) OF WORLI DIVISION SITUATED ON BALAJI TEMKAR MARG AT WORLI, MUMBAI-400030.

1 Refer to the following:-

- 1.1. MHADA/CE III letter MH/EE//B.P.)/GM/MHADA/ET-387/2023 DATED 118 Dec 2023
- 1.2. INS Trata letter 624/WK/NOC/209 (PT) dated 05 Oct 23, 06 Nov 23 and 19 Dec 23.

2 Background. This letter pertains to redevelopment of Municipal tenanted acquired property bearing C.S. No 209 (PL) of Worli Division, situated on Balaji Temkar Marg at Worli, Mumbai. INS Trata vide its letter dated 05 Oct 23 had intimated MHADA that the location of construction is about 300m from INS Trata defense Land Site II and falls within 500m from Site II, III and IV. Further, it was also intimated that the NOC for constructions within 500m of defence establishments is necessary law Ministry of Defence guidelines for issue of NOC As no reply was received a follow up letter was sent on 22 Nov 23 MHADA vide its letter quoted above dated 19 Dec 23 intimated the following:



2.1. As per DP remarks the subjected property does not fall in vicinity of Naval Establishment & as per survey reports submitted by IRS Chennai, the shorter distance of subjected site & Naval INS Trata is 528.82 meters, i.e. the subjected site is beyond 500 mtrs from defence establishment.

2.2. Circulars dated 18.05.2011, 18.03.2015, 17.11.2015 and 23.12.2022 are quashed and set aside by court.

2.3. Therefore, neither the 2011 guideline of the 2010 guideline can be applied today.

3. Present Scenario. Following remarks are submitted in respect of the abovementioned construction activity:

3.1 The distance submitted by IRS Chennai as mentioned in MHADA letter dated 18 Dec 23 has been shown as 520.82m, however it is submitted that this distance is from Site I of INS Trata. The closest distance between the construction site and boundary wall of Site II of INS Trata is 280m. It is reiterated that this fact has already been mentioned by INS Trata through the letters quoted at Para 1 1 above.

3.2. Based on SLP filed by Indian Navy, The Hon'ble Supreme court has set aside the Hon'ble Mumbai High Court judgement which had quashed the MoD circulars of 18 May 11, 18 Mar 15, 17 Nov 15 and 23 Dec 22. Therefore, the restriction with respect to obtaining NOC for any construction within 500m of defence land still exists.

4. In view of the foregoing, following is requested:-

4.1. Forward details of Naval NOC if held/ available.

4.2. **In case of NOC not available, NOC be sought as per extant regulations and in the interim, Stop Work Notice be issued for the above-mentioned construction.**

(Kumar Gaulam)
Commander Works Officer for Commanding Officer

Copy to:-
The Flag Officer Commanding-in-Chief (for CWO/ SO (Land))
Headquarters, Western Naval Command
Mumbai 400001

The Flag Officer Commanding
(for ALIO)
Headquarters Maharashtra Naval area
2 Floor, Manor House
SBS road, Mumbai 400023"

(emphasis supplied)

70. It is the petitioner's case that the petitioner was not aware about any correspondence whatsoever between respondent No.3 and MHADA in relation



to the petitioner's project except for the MHADA by its letter dated 14 July 2025 2026:BHC-OS:11560-
addressed to the petitioner seeking the petitioner's say by the following letter:

**"Building Permission Cell, Greater Mumbai / Mhada
(A designed Planning Authority for MHADA layout constituted as per
Government Regulation No.TPB4315/167/CR-51/2015/UD-II DT.23 May
2018)**

No.EE/BP/Cell/GM/MHADA/Et-1164/2025

Date :- 14July 2025

To,

1. Developer, M/s. Techno Fresh World LLP. 6, Narayan Mansion, Plot No.166A, 1 st Floor, Dr. Babasaheb Ambedkar Marg, Khodad Circle, Mumbai-14.	2. Architect, Shri. Nilesh H. Dholakia, M/s. Saachi Associates, L-21, M. R. Society, Relief Road, Santacruz (W), Mumbai-400054
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Sub:- Proposed reconstruction of existing residential building No.41 known as INDRAPRASTHA CHSL, Adarsh Nagar, MHADA Layout, bearing C.S.No.209(pt), of Worli Division, at the junction of Balaji Temkar Marg & New Prabhadevi Road, situated at G/S Ward, at Worli, Mumbai.

Ref:- 1. Letter received from Mr. Kumar Gautam, Commander, Works Officer, for commanding officer, INS Trata letter No.624/WK/NOC/209(pt) on dtd. 03.07.2025
2. Letter received from Himanshu Sharma, Lieutenant Commander, Executive Officer (AOL), for commanding officer, INS Trata letter No.624/WK/NOC/209(pt) on dtd. 03.07.2025.

Sir,

Adverting to above cited subject please find enclosed herewith the letter under reference received from INS Trata. (i.e. Western Naval Command/Navy)

Vide letter under references the Naval Officers has instructed this office to issue Stop Work Notice for subjected work.

In view of the above you are requested to submit your say within 3 days so that this office will be able to answers the letter under references.

This is for your information & necessary action please.

Yours faithfully,

D.A. As above.

Executive Engineer (W.S.)
B.P. Cell/G.M./MHADA.

(emphasis supplied)

71. The petitioner replied to the MHADA letter by its letter dated 14 July 2025 which was received by MHADA on 15 July 2025, *inter alia* stating that its



development permission was granted under the 23 December 2022 circular. It was stated that the Navy authorities had relaxed the limit vide circular dated 23 December 2022 wherein the limit was reduced to 50 meters. In such letter it was stated that the first Commencement Certificate was issued on 3 February 2023 which was after reduction of limit from 500 meters to 50 meters of all sites of INS Trata as per circular dated 23 December 2022 (supra). It was recorded that suddenly out of the blue, Navy issued another circular on 23 February 2023 that the circular dated 23 December 2022 has been kept in abeyance till further orders. It is recorded that the Navy cannot and has not withdrawn the circular retrospectively. There was no mention of any such retrospective withdrawal of the circular dated 23 December 2022. The petitioner has also recorded that further Commencement Certificate was granted to the petitioner in compliance of the orders passed by this Court in Writ Petition No. 1437 of 2024 and that the MHADA had granted approval and issued further Commencement Certificate, in alignment with its vision of timely delivery of houses to all the families of the existing society members and the home buyers. It is also stated that further two more Commencement Certificates have been granted on 30 May 2024 and 23 October 2024 and as on such date the petitioner had completed the rehabilitation building upto 20 floors and in the sale building the petitioner has completed construction upto 20 floors and has applied for further Commencement Certificate. It is also stated that the petitioner had been 100% compliant of all existing laws applicable at the time of obtaining approvals and was also in process of applying for final Occupation Certificate for rehab



building. It was further stated that the rehab building has been completed in record time of 26 months with the best of workmanship. Significantly it was recorded that the Navy Authorities are unnecessarily raising the issue when the first Commencement Certificate was granted in the intermediate period when circular of 23 December 2022 was in force and Navy now cannot take the stand to issue stop work notice. It was also pointed out that so many buildings have been constructed in the vicinity which are at 120 meters and are in limit of 500 meters and are constructed even before Navy has reduced the limit to 50 meters as per circular dated 23 December 2022. It was hence, submitted that the letters issued by INS Trata are not just bad in law but also in spirit, whereby they are unnecessarily trying to delay the rehabilitation of the 72 families of the existing society members, who have been eagerly waiting to be rehoused in their dream homes as well as the home buyers who have invested their hard earned money. On such backdrop, it was requested that further Commencement Certificate be issued for the sale building above 20th floor at the earliest.

72. After the aforesaid representation was made by the petitioner, dealing with the contentions of respondent No.3 on granting of any Naval NOC, on 11 August 2025 the MHADA accepted the petitioner's representation and granted the petitioner a "sixth commencement certificate" for construction of the full sale building.

73. Thereafter, on 28 August 2025 the petitioner had applied for an Occupation certificates and again on 10 October 2025 a second application was



made for Occupation Certificate. However, on both the occasions the applications were returned for want of technical compliance. The petitioner again applied after completing all technical formalities on 16 October 2025 for grant of Occupation Certificate. However, the same was not being granted. It is the petitioner's case that on 20 October 2025 the MHADA and representative of respondent No.3 had a joint meeting wherein they decided on a stop work notice being issued to the petitioner to stop work on the development. In pursuance thereto on 24 October 2025 the MHADA, in view of the letter received from Himanshu Sharma, Lieutenant Commander, Executive Officer (AOI), for Commanding Officer, INS Trata, issued to the petitioner, a stop work notice till the submission of Naval NOC. The impugned communication dated 24 October 2025 is required to be noted which reads thus:-

**“Building Permission Cell, Greater Mumbai / Mhada
(A designed Planning Authority for MHADA layout constituted as per
Government Regulation No.TPB4315/167/CR-51/2015/UD-II DT.23 May
2018)**

No.EE/BP/Cell/GM/MHADA/Et-1595/2025

Date :- 24 October 2025

Stop Work Notice

To,

1. Developer, M/s. Techno Fresh World LLP. 6, Narayan Mansion, Plot No.166A, 1 st Floor, Dr. Babasaheb Ambedkar Marg, Khodad Circle, Mumbai-14.	2. Architect, Shri. Nilesh H. Dholakia, M/s. Saachi Associates, L-21, M. R. Society, Relief Road, Santacruz (W), Mumbai-400054
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Sub.:- Proposed reconstruction of existing residential building No.41 known as INDRAPRASTHA CHSL, Adarsh Nagar, MHADA Layout, bearing C.S.No.209(pt), of Worli Division, at the junction of Balaji Temkar Marg & New Prabhadevi Road, situated at G/S Ward, at Worli, Mumbai.

Ref:- . Letter received from Himanshu Sharma, Lieutenant Commander, Executive Offer (AOL), for commanding officer, INS Trata letter No.624/WK/NOC/209(pt) on dtd. 02.09.2025.



Sir,

Adverting to above cited subject please find enclosed herewith the letter under reference received from INS Trata. (i.e. Lieutenant Commander, Executive Offer (AOL))

In this letter the Naval Department mentioned that the construction activity is still in progress at the subjected site. The Naval Department has informed this office to issue stop work notice for subjected building.

Therefore, you are hereby instructed to **Stop Work Notice** of subjected building till the submission of Naval NOC.

This is for your information & urgent action please.

Yours faithfully,

Executive Engineer (W.S.)
B.P. Cell/G.M./MHADA.”

(emphasis supplied)

74. The petitioner immediately on 29 October 2025 addressed a reply to the stop work notice *inter alia* pointing out serious prejudice which is being caused to the petitioner although the entire construction was carried out in accordance with law and no requirement of NOC from Naval authorities was insisted during the construction being undertaken, and now a stop work notice was issued when the construction is already completed and the Occupation Certificate has been applied, which is baseless and illegal. It was also pointed out that till the said date almost Rs.40 crores have been paid as premiums to MHADA under various heads and all permissions were granted without any whisper with respect to requirement of any permission from Naval authorities. The petitioner's application for Occupation Certificate was rejected by MHADA on the ground that the petitioner had not obtained NOC from respondent No.3-Navy. The petitioner on such premise has contended that the petitioner has spent almost Rs.200 crores in developing the property and Rs.40 crores being paid as premiums to MHADA and the rehab building is completed and the sale building



is substantially completed and in these circumstances, serious prejudice not only to the 72 occupants / members of respondent No.4 society, but also to the bonafide flat purchasers.

75. It is thus the petitioner's case that the valuable property rights guaranteed to the petitioner under Article 300A of the Constitution as also the rights guaranteed under Article 14 of the Constitution have been breached by the impugned actions of respondent Nos.1 and respondent No.3, more particularly, when from time to time Commencement Certificates were granted and construction of the rehabilitation building is complete and construction of the sale building is almost complete.

76. Having noted the aforesaid undisputed facts, we find that the entire basis for the MHADA to issue stop work notice dated 24 October 2025 as also the impugned rejection of the petitioner's application for Occupation Certificate dated 29 October 2025 is on the basis of the petitioner not obtaining NOC from respondent No.3 – Navy. In this regard, at the outset, it is clear from the record that although the Intimation of Approval was issued to the petitioner on 26 June 2022 and thereafter, the Commencement Certificates were granted firstly on 3 February 2023, then second Commencement Certificate was granted on 12 April 2023, third Commencement Certificate was granted on 5 April 2024, fourth Commencement Certificate was granted on 30 May 2024, and fifth Commencement Certificate was granted on 23 October 2024, which all resulted in the petitioner undertaking construction and completing full construction of the rehabilitation building and almost having completed the "sale building", the



petitioner was never independently informed either by MHADA or respondent No.3 that the petitioner's project requires any NOC.

77. It is also significant that for the first time a letter of MHADA addressed to the petitioner dated 14 July 2025 was issued in regard to respondent No.3's writing to MHADA in regard to the petitioner's project, and which was responded by the petitioner by its letter dated 15 July 2025 that such NOC was not the requirement and it is after such response, on 11 August 2025 a "sixth Commencement Certificate" came to be granted to the petitioner and in pursuance of which the construction now stands fully completed for rehabilitation building and also almost complete in respect of the sale building. Therefore, it is certainly a situation of the petitioner being taken by a surprise by the MHADA in confronting the petitioner with such communication from respondent No.3, that the petitioner was required to obtain NOC in respect of its construction.

78. On such backdrop, we examine as to what is the policy of respondent No.3 in regard to grant of NOC and as contained in the circulars as noted by us hereinabove.

79. The first Circular dated 18 May, 2011 issued by Government of India, Ministry of Defence as addressed to the Chief of the Defence staff on the subject "*Guidelines for issue of 'No Objection Certificate (NOC)' for building constructions*" recorded that the issue of NOC for construction on lands adjacent to Defence Establishments had generated avoidable controversies and that



various issues involved in regard to two cases, namely, Sukna and Adarsh were reviewed and the matter was considered in detail by the Government in consultation with the Services. It was felt that Works of Defence Act, 1903 which imposes restrictions upon use and enjoyment of land in vicinity of Defence Establishments needs to be comprehensively amended so as to take care of security concerns of defence forces. It was stated that while the process of amendment has been put in motion and may take sometime, it was felt necessary to issue instructions in the interim to regulate grant of NOC. The objective of these instructions is to strike a balance between the security concerns of the forces and the right of public to undertake the construction activities on their land.

Following guidelines were laid down:

“(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.

(c) Objection/views/NOC shall not be given by any authority other than Station Commander to the local municipality or State Government agencies and shall not be given directly to private parties/builders under any circumstances.

(d) NOC once issued will not be withdrawn without the approval of the Service Hqrs.”



80. On such backdrop, it appears that after the issuance of the aforesaid guidelines dated 18 May, 2011, several representations were received with regard to restrictions placed by the said guidelines on the building construction in the vicinity of Defence Establishments. It was hence decided to undertake a comprehensive review of the guidelines so as to address issues that had arisen from the implementation of the said guidelines and accordingly, it was decided by the Ministry of Defence to modify the Circular dated 18 May, 2011 by adding a proviso under para 1(b) to the effect that NOC from LMA/Defence Establishment would not be required in respect of a construction for which permission had been issued by the competent local municipal authority prior to 18 May, 2011 (date of circular). However, this proviso shall not apply to any amendment to the said construction permission with regard to height, if such amendment has been allowed after 18 May, 2011. The Ministry of Defence informed such modification by its communication dated 18 March, 2015 addressed to the Chief of Defence Staff.

81. On 17 November, 2015, the Ministry of Defence again addressed a communication to the Chief of Defence Staff on the subject of 'Guidelines for issue of 'No Objection Certificate' for building construction thereby referring to the original Circular dated 18 May, 2011, the content of which are to the following effect:

No.F 11026/2/2011/D(Lands)
Government of India
Ministry of Defence
New Delhi,



dated 17th November, 2015

To,
The Chief of Army Staff
The Chief of Air Staff
The Chief of Naval Staff

Subject: Guidelines for issue of No Objection Certificate (NOC) for building constructions – regarding.

I am directed to refer to circular of even number dated 18.05.2011 vide which guidelines for issue of No Objection Certificate (NOC) for building constructions; were Issued. Consequent to representations/references received with regard to restrictions placed by these guidelines on building construction in the vicinity of Defence Establishment where high rise buildings/structures already exist within 500 metres of the periphery, it has been decided to issue following amendments to guidelines by adding a second proviso under para 1(b) of Circular of even number dated 18.05.2011 as follows:

“Wherever buildings/structures of four storeys or more already exist within 500 metres of the periphery of any Defence establishment and the construction proposed is in line with or behind i.e., In the shadow or shield of such building/structure, the State Government/Municipal Corporation may, after obtaining comments from the LMA and giving due consideration to the same, decide whether to approve such proposals or not. LMA shall give his comments within a period of 30 days from the date of receipt of a reference from the State government/Municipal Corporation. This order will be implemented prospectively.”

2. In respect of proposals for construction between the boundary of the Defence establishments and the existing structure as indicated above and within 500 metres of the Defence establishments, the guidelines contained in Circular dated 18.05.2011 with regard to NOC from the LMA shall continue to apply. Other provisions of the circular dated 18.05.2011 and 18.03.2015 will also remain unchanged.

(Surya Prakash)
Director(L&C)”

82. Thereafter, on 4 April, 2016, the Hon’ble Defence Minister, Government of India, addressed a letter to the Hon’ble the Chief Minister of the State of Maharashtra in the context of the guidelines dated 17 November, 2015 and on which a clarification was sought by the Hon’ble the Chief Minister on the issue of No Objection Certificate for building construction near Defence establishments being issued by respondent no. 3. The point-wise clarifications as set out in the said letter of the Ministry of Defence, Government of India was to the following



effect:

- (i) The phrases “in line with or behind” and “by the shadow or shield of” is meant to indicate construction proposed which is in line with or in shadow or shield of existing structure within 500 metres radius of the Defence establishments. Therefore there appears to be no ambiguity. However, I have directed the Department to examine the matter to remove ambiguities if any.
- (ii) The timeframe of 30 days is stipulated so as to cast duty on LMA to respond with his comments within the timeframe. In case no comments are received within the time limit it is to be assumed that he has no comments to offer. Similarly where LMA gives negative remarks it is for the State Government or Municipal Authority to take a considered decision in the matter.
- (iii) In such cases the comments of LMA are required to be obtained if the permission is granted after 18.5.2011. However, in view of the clarifications given at (ii) above I see no difficulty in asking such NOC.
- (iv) The height of the structure may be as per the applicable municipal laws.
- v) The issue of LMA issuing comprehensive guidelines for specific areas instead of giving cases by case approvals as suggested by you, will be examined separately.”

83. After almost six years, i.e., 23 December, 2022 in supersession of the original Circular dated 18 May, 2011 notifying guidelines read with amendments issued vide circular of even number dated 18 March, 2015 and 17 November, 2015 and NOC guidelines issued vide MoD letter dated 21 October, 2016 regarding grant of No Objection Certificate from the Local Military Authority (LMA) for construction of buildings in vicinity of defence establishments, fresh guidelines for issue of NOC came to be issued by the Ministry of Defence vide circular dated 23 December, 2022 addressed to the Chief of Defence Staff. Fresh guidelines are required to be noted, which reads thus:

No 11026/20/2011/D(Lands)
Government of India
Ministry of Defence
New Delhi,

Dated 23 December 2022



To
The Chief of Army Staff
The Chief of Air Staff
The Chief of Naval Staff

Subject: Guidelines for issue of 'No Objection Certificate (NOC) for building constructions'- regarding

Reference circular of even number dated **18.05.2011** read with amendments issued vide circular of even number dated **18.03.2015** & **17.11.2015** and NoC guidelines issued vide MoD letter dated **21.10.2016** regarding grant of No Objection Certificate (NOC) from the Local Military Authority (LMA) for construction of buildings in vicinity of defence establishments.

2. In supersession of above guidelines, fresh guidelines for issue of NOC for construction in vicinity of defence establishments are laid down as under:-

i. 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 of 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.

ii. Where the local municipal laws do not require yet the Station Commander feels that any construction coming up within 50 meter radius of defence establishment which are listed at Annexure A, is 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 the higher authorities, if need be through AHQ/MoD. Provided that:-

a) For all other defence establishment not listed at Annexure A, the said prescribed distance shall be 100 meter (for multistoried building of more than four storey the distance shall be 500 meter) from the periphery.

b) In such defence establishments not listed at Annexure A, wherever buildings / structure of four storeys or more already exist within 500 metres of the periphery of any Defence establishment and the construction proposed is in the line with or behind i.e. in the shadow or shield of such building / structure, the State Government / Municipal Corporation may, after obtaining comments from the LMA and giving due consideration to the same, decide whether to approve such



proposals or not. LMA shall give his comments within a period of 30 days from the date of receipt of a reference from the State Government/Municipal Corporation.

iii. NOC from LMA/defence establishment would not be required in respect of a construction for which permission had been issued by the competent authority prior to 18.05.2011. However, this proviso shall not apply to any amendment to said construction permission with regard to height, if such amendment has been allowed after 18.05.2011.

iv. Objection/views/NOC shall not be given by any authority other than Station Commander to the local municipality or State Government agencies and shall not be given directly to private parties/builders under any circumstances.

v. NOC once issued will not be withdrawn without the approval of the Service HQrs. However, MoD reserves the right to review any NoC granted by the Station Commander and pass such order thereon as deemed fit.

vi. These instructions will not apply where constructions are regulated by the provisions of the existing acts/notification viz., Cantonments Act, 2006, Air Craft Act, MOGA, 1934, Gazette Notification SO 54(E) dated 14.01.2011 (as revised from time to time), Works of Defence Act, 1903, etc. In such cases provisions of the concerned Act/Notification will continue to prevail.

(Sharmistha Maitra)
Dir (Lands)”

(emphasis supplied)

84. In the context of the said guidelines in the schedule of the defence establishment in relation to Navy, following serial no. 5 was made:

“II. Defence establishments/installations under management of Navy, where security restrictions shall apply upto 50 mtrs. from the outer wall of such defence establishments/installations

S. No.	Name of Station	District	State
1.
10.	INS Trata (Site II, III & Site IV) Worli	Mumbai	Maharashtra

85. Thus, the defence establishment in question was an establishment listed in



Annexure A of the said Circular dated 23 December 2022

86. On 23 February, 2023, the Ministry of Defence addressed a communication to the Chief of Defence Staff *inter alia* recording that it was decided that MoD letter under reference (circular dated 23 December, 2022) shall be kept in abeyance till further orders.

87. From the aforesaid position as brought about by the circulars, it appears to be clearly not in dispute that by a Circular dated 23 December, 2022 issued by Government of India, Ministry of Defence, the earlier guidelines notified by Circular dated 18 May, 2011 with amendments made to the same vide Circular dated 18 March, 2015, 17 November, 2015 and NOC guidelines issued vide MoD letter dated 21 October, 2016 regarding grant of No Objection Certificate from the Local Military Authority (LMA) for construction of buildings in vicinity of defence establishments, had stood superseded and fresh guidelines were issued in terms of what has been provided for in circular dated 23 December, 2022.

88. In its applicability to the project in question, it clearly appears that the petitioner's site would stand covered by first paragraph of 2(ii) of the said circular, which provides that where the local municipal laws do not require yet the Station Commander feels that any construction coming up within 50 meter radius of defence establishment which are listed at Annexure A, is a security hazard, it should refer the matter to the 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 the event, the Municipal Authority/State Government do not take cognizance of the said objection, then the matter may be taken up with the higher authorities, if need be through AHQ/MoD. Provided that for all other defence establishment not listed at Annexure A, the said prescribed distance shall be 100 meter (for multistoried building of more than four storey, the distance shall be 500 meter) from the periphery. This is not applicable to the petitioner, as the petitioner's name is listed at Annexure A as noted hereinabove.

89. Thus, what is clearly brought about is that only if the project of the petitioner was to be within 50 mtrs. radius of defence establishment and being listed in Annexure-A, it was necessary to obtain a NOC from respondent no. 3 under the regime of new guidelines dated 23 December, 2022. The petitioner's construction permission necessarily fell within the applicability of fresh guidelines dated 23 December, 2022 inasmuch as, the 1st Commencement Certificate was granted to the petitioner on 3 February, 2023 and thereafter the subsequent Commencement Certificate as noted hereinabove, however, on respondent No.3's showing it was about 280 meters from the defence establishment which is way beyond the prescribed distance of 50 meters under the latest Circular dated 23 December 2022.

90. Further, it appears that not only for respondent no. 3 but also for MHADA, an uncertainty and ambiguity was created by MoD addressing a fresh circular dated 23 February, 2023 whereby it informed the Chief of Defence Staff that it was decided that the fresh guidelines notified by Circular dated 23



December, 2022 shall be kept in abeyance till further orders.

91. There are two legal consequences which have arisen, firstly, as to what would be the effect in the Ministry of Defence issuing the latest communication /Circular dated 23 February, 2023 as applicable to the petitioner project informing that the Circulars dated 23 December 2022 was kept in abeyance and secondly, whether this would result in the regime prior to 23 December, 2022, i.e., original circular dated 18 May, 2011 read with amendments (supra) being revived and would become applicable.

92. We analyze the legal effect which is brought about. Once by issuance of fresh guidelines vide Circular dated 23 December, 2022 was notified superseding the earlier guidelines notified by Circular dated 18 May, 2011, by virtue of such supersession, the earlier guidelines dated 18 May, 2011 along with its modification by subsequent circulars dated 18 March, 2015, 17 November, 2015 and 21 October, 2016 stand completely extinguished and/or obliterated. After 23 December, 2022, what would become applicable is to paragraph 2(ii) of the said circular dated 23 December, 2022 which prescribed a distance of 50 meter radius from the defence establishment in respect of constructions as listed in Annexure A. The establishment of INS Trata being notified in 'Annexure A' of the said circular brought about a situation that as the petitioner's construction was beyond the distance of more than 50 meters radius of defence establishment, by applicability of Circular dated 23 December, 2022, NOC of the Naval establishment was not required.



93. Further, the effect of the fresh guidelines/circular dated 23 December, 2022 being ordered to be kept in abeyance vide Circular dated 23 February, 2023 issued by the Ministry of Defence, in our opinion, would not revive or bring to life the already superseded circular dated 18 May, 2011 along with its modifications. It would be an absurd proposition to hold that the earlier circular which stood superseded by the subsequent circular would stand automatically revived and more particularly, the regime under both the circular being totally distinct. This also for the reason that it is not the case that the circular dated 23 December, 2022 issuing fresh guidelines was already acted upon and the parties had changed their position like in the petitioner's case where the petitioner undertook the construction and has completed the same, in the rehabilitation building as also majority of the construction for the sale building being completed. In such context, the petitioner would be correct in their contention in relying on the decisions in **Goan Real Estate and Construction Ltd. & Anr. vs. Union of India, through Secretary, Ministry of Environment and Ors.** (supra); **Brihanmumbai Mahanagarपालिका & Anr. vs. Secretary, Bar Council of Maharashtra and Goa & Anr.** (supra), **State of Uttar Pradesh & Ors. vs. Hirendra Pal Singh & Ors.** (supra) wherein it appears to have been recognized to be a well-settled position that the law would recognize the rights of the parties which would stand crystallized, acting on a particular position in law, even in a case where a particular notification is subsequently declared to be illegal by the Court, however, the actions which were taken under the same when the same was held to be valid. The Supreme Court has clearly held that such rights which stood



crystallized, till the notification was declared illegal by the Court, all the actions taken pursuant to the notification so declared illegal would not be affected in any manner. The relevant observations of the Supreme Court in **Goan Real Estate and Construction Ltd. & Anr.** (supra) in this context read thus:

“38. The contention raised on behalf of the respondents that the construction already completed would not be affected in any manner by decision of this Court in Indian Council for Enviro-Legal Action (supra) but incomplete construction cannot be permitted to be completed is devoid of merits. Two amendments made in the year 1994 were declared to be illegal vide judgment dated April 18, 1996. Till then, its operation was neither stayed by this Court nor by the Government. Therefore, a citizen was entitled to act as per the said notification. This Court finds that the rights of the parties were crystallized by the amending notification till part of the same was declared to be illegal by this Court. Therefore, notwithstanding the fact that part of the amending notification was declared illegal by this Court, all orders passed under the said notification and actions taken pursuant to the said notification would not be affected in any manner whatsoever.”

94. Similar view was taken by the Division Bench of this Court in **Brihanmumbai Mahanagarpalika & Anr.** (supra) in regard to the amendment which was brought about to Rule 49 of the Bar Council of India Rules. The Court in such context made the following observations:

“30. For these reasons, we have arrived at the conclusion that the deletion of the second and third paragraphs of Rule 49 and the corresponding deletion by the State Bar Council of the exception cannot be regarded as ultra vires or unreasonable. Moreover, we must also take note of the position in law that the Court cannot issue a writ of Mandamus to the legislature to enact a law and similarly a Court cannot direct a subordinate legislative body to enact a particular rule. In State of Tamil Nadu vs. K. Shyam Sunder, the Supreme Court held that if an amending Act of the legislature is struck down for want of legislative competence or on the ground that it is violative of the fundamental rights in Part-III of the Constitution, it would be unenforceable in view of Article 13(2) and the old Act would revive. But this proposition of law, the Supreme Court held, is not applicable to subordinate legislation. Hence, even if the Court were to strike down the amendment made to Rule 49, that would not result in a revival of Rule 49 in its original form. We must, however, clarify that for the reasons that we have already indicated, we have come to the conclusion that the deletion of the second and third paragraphs of Rule 49 was valid.”



95. In **State of Uttar Pradesh & Ors. vs. Hirendra Pal Singh & Ors.** (supra),^{2026:BHC-OS:11560-} the Court was dealing with the distinction between repeal and suspension in the context of U.P. Legal Remembrancer's Manual, when the Court observed that the the High Court vide the impugned interim orders stayed the operation of the amended provisions of the LR Manual and had directed the State authorities to consider the applications for renewal etc. when it was urged by the appellant/State of U.P. that the clauses of the LR Manual which stood repealed do not survive any more and no direction could have been issued by the High Court to act upon the non-existing provision. It is in such context, the Supreme Court held that there is a clear distinction between repeal and suspension of the statutory provisions and the material difference between both is that repeal removes the law entirely, when suspended, it still exists and has operation to other respects except wherein it has been suspended. It was held that a repeal puts an end to the law whereas a suspension holds it in abeyance. The relevant observations as made by the Supreme Court are required to be noted, which read thus:

“18. The High Court vide impugned interim orders stayed the operation of the amended provisions of the L.R. Manual and directed the State authorities to consider the applications for renewal etc. under the unamended provisions, i.e., which stood repealed by the amendment dated 13.8.2008. The question does arise as to whether such a course is permissible to the High Court for the reason that it has been canvassed by Shri Patwalia that the clauses of the L.R. Manual which stood repealed do not survive any more and no direction could have been given by the High Court to act upon the non-existing provisions.

....

24. Thus, there is a clear distinction between repeal and suspension of the statutory provisions and the material difference between both is that repeal removes the law entirely; when suspended, it still exists and has operation in other respects except wherein it has been suspended. Thus, a repeal puts an end to the law. A suspension holds it in abeyance.



25. This Court in *Bhagat Ram Sharma v. Union of India & Ors.*, AIR 1988 SC 740, explained the distinction between repeal and amendment observing that amendment includes abrogation or deletion of a provision in an existing statutes. If the amendment of an existing law is small, the Act prefaces to amend; if it is extensive, it repeals and re-enacts it.

26. In fact, the amended provisions of the L.R. Manual are under challenge before the High Court and the provisions repealed by the Amendment dated 13.8.2008 are not in existence and it will be assumed that the same had never been in existence. The Court while examining the validity of the amended provisions may reach a conclusion that the said provisions are ultra vires and unconstitutional and strike down the same but that may not automatically revive the provisions which stood repealed by the said amendment.

28. In *Firm A.T.B. Mehtab Majid and Co. v. State of Madras & Anr.*, AIR 1963 SC 928, this Court while dealing with a similar issue held :

“20. Once the old rule has been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new rule is held to be invalid.”

29. Therefore, it is evident that under certain circumstances, an Act which stood repealed, may revive in case the substituted Act is declared ultra vires/unconstitutional by the court on the ground of legislative competence etc., however, the same shall not be the position in case of subordinate legislation. In the instant case, the L.R. Manual is consisted of executive instructions, which can be replaced any time by another set of executive instructions.

30. Therefore, question of revival of the repealed clauses of L.R. Manual in case the substituted clauses are struck down by the court, would not arise. In view of this, the interim order would amount to substituting the legal policy by the judicial order, and thus not sustainable.”

96. Thus, it is clear that there is no question of guidelines issued by the very first Circular dated 18 May, 2011 getting revived although superseded and becoming applicable in view of the fresh Circular dated 23 December, 2022 which also was kept in abeyance by Circular dated 23 February, 2023. The position, in our opinion, is quite peculiar inasmuch as even the 50 meters radius NOC as contemplated in paragraph 2(ii) of Circular dated 23 December, 2022 also appears to be not applicable, the same being kept in abeyance.



97. In the aforesaid situation, we consider as to how respondent no. 3 could at 2026:BHC-OS:11560- all insist and that too on the backdrop of said actions, which appear to be in the teeth of Circular dated 23 December, 2022 and the subsequent Circular dated 23 February, 2023 keeping said guidelines in abeyance to insist for NOC. It appears to be an action *per se* arbitrary, illegal apart from causing a very serious prejudice to the petitioner. Thus, the impugned action would be required to be held to be arbitrary and violative of the petitioner's right under Article 14 of the Constitution.

98. This apart, it cannot be overlooked that while the guidelines dated 23 December, 2022 were prevalent, the petitioner was granted the Commencement Certificates in regard to its construction, which were acted upon and in pursuance of the several Commencement Certificates thereafter unhesitatingly and unequivocally issued by MHADA, the petitioner changed its position and undertook the construction as noted above in respect of rehabilitation building the construction of which stood completed and in respect of the sale building is also almost complete. We do not find that there is any fault whatsoever on the part of the petitioner of not adhering to any of the requirements of law inasmuch as the petitioner made valid applications for sanction of plans and for grant of Commencement Certificate, which came to be granted by the Planning Authority -MHADA. The said permissions are never questioned by any of the authorities much less by respondent no. 3 in the manner as the law would recognize except for taking up the matter with the MHADA and merely insisting that the petitioner applies for grant of NOC. It is, therefore, clear that if the petitioner's



construction was to be in any manner objectionable and/or a threat to the security and safety of the defence establishment, respondent No.3 would have prevailed upon the planning authority not to issue a single Commencement Certificate and by exercising appropriate vigilance. However, this is a clear case where respondent No.3 was never bothered even to take up the issue at the appropriate time with respondent No.1- MHADA, resulting into the petitioner obviously acting upon the permissions and completing the construction. It is also not the stand of respondent No.3-Navy that it would reject and/or not grant NOC to the petitioner. The insistence is only that the petitioner should apply. This, in our opinion, is quite strange to say the least, when more particularly respondent No.3 not only granted permission and/or not objected to the several constructions in the vicinity as noted by us hereinabove, and as specifically pleaded by the petitioner (supra). Even otherwise the Ministry of Defence has thought it appropriate to confine the distance to 50 meters as seen from the circular dated 23 December 2022. Thus, for structures of the nature which are not within the parameters as contemplated by paragraph 2(ii) of the said circular are not a security threat. For such reason respondent No.3 could not have taken the impugned action against the petitioner's construction.

99. Such approach of respondent No.3 in our opinion, is another arbitrariness. It is not the case that respondent no. 3 and its officers are not aware as to what are the requirements as prescribed by Circular dated 23 December, 2022. Insofar as the distance of the petitioner's site is concerned, it cannot be accepted that the officers of respondent no. 3 are not aware about the subsequent



circular of the Ministry of Defence dated 23 February, 2023 keeping the fresh 2026:BHC-OS:11560- guidelines dated 23 December, 2022 in abeyance. What surprises us is that in the teeth of said circular, the impugned action has been taken, which is a clear harassment to the petitioner for no rhyme and reason. In such context, in our opinion, considering the large number of constructions which have come up in respect of which details are also set out by the petitioner in the petition, which are standing without NOC and in the vicinity of the INS Trata also depicts the approach of respondent no. 7 of pick and choose. We, therefore, find much substance in the arbitrariness of pick and choose being applied by respondent no. 3 apart from what we have observed hereinabove in regard to the applicability of the fresh guidelines dated 23 December, 2022 and the same being kept in abeyance vide Circular dated 23 February, 2023.

100. There is another facet of the matter, which also reflects the arbitrariness on the part of MHADA i.e. MHADA from not only sanctioned the petitioner's plan but time to time issued Commencement Certificates, which were acted upon by the petitioner in undertaking full construction under the said premises. What is important is that even after the MHADA responded to respondent no. 3's communication dated 14 July, 2025, MHADA granted further Commencement Certificate on 11 August, 2025. Thus, once the Planning Authority has completely adhered to the requirement of the planning law on the petitioner fulfilling all the statutory conditions as to on what basis merely acting on the communication from respondent no. 3, an Occupation Certificate could be denied to the petitioner and/or such stop work notice can be issued, cannot be



understood.

101. In the aforesaid context, the petitioner would be correct in its contention in placing reliance on the decision of the Division Bench of this Court in **Shivaji Nagar Shivkiran Co-operative Housing Society Ltd. & Anr. vs. Maharashtra Housing and Area Development Authority & Ors.** (supra) wherein in an identical situation as in the present case, the Court while allowing the petition, considered the effect of fresh guidelines notified by Circular dated 23 December, 2022 and the same being kept in abeyance vide Circular dated 23 February, 2023. The Court observed that holding the circular in abeyance and that too for an indefinite period cannot revive an earlier restriction inasmuch as the rights of the petitioner therein had stood crystallized. The relevant observations as made by the Division Bench are required to be noted, which read thus:

“20. The important factor for our purposes is the substitution of the 2011 and subsequent circulars with a 500-meter distance restriction by the December 2022 circular at page 102 prescribing a 50-meter distance. If the December 2022 circular is in operation, then there is no question of an NOC even being sought. The issue arises because in February 2023, the December 2022 revised circular was apparently held in abeyance. We do not see how this holding in abeyance and that too for an indefinite period could serve to revive an earlier restriction. Further this could only operate prospectively and could not possibly affect a permission previously granted. Yet that is precisely what seems to have happened in this case and this is why we say that there are extremely peculiar facts and circumstances of no wider or more general applicability.

21. In any event, the settled legal position would be that in the time window between the December 2020 circular reducing the distance requirement and the abeyance notification of 26th December 2023, the Petitioners’ rights had crystallized, and these cannot now be undone. That aspect of the law is not contentious.

23. As we noted, since there is an SLP pending, we are making no observations in regard to the circulars of 2011 (all the subsequent circulars of 2015, 2016 and 2022) which are part of the judgment in *Dolby Builders Pvt Ltd v Municipal Corporation of Greater Mumbai & Ors.*

25. Third, and this is the other peculiarity and singularity of the matter, is



the precise location of the plot especially in the context of the other projects and the further Affidavit that has been filed by the Defence. As we have noted there is one significant project, Shandilya Terrace, of ground and 24 for which there is a positive act of the grant of an NOC. There are also other projects for which no NOC has been required or given. The one which is in dispute, even if ignored, will make no difference.

26. We do not think that it is possible to accept an argument that in the application of a set of circulars there can be any pick-and-choose approach. This would lead straightaway to an Article 14 challenge on the grounds of arbitrariness and discrimination and would undoubtedly succeed.

27. There is also the aspect of the well-established doctrine of proportionality which requires that a proper balance be struck between competing needs, demands or equity.

28. We should not be misunderstood to have held that the requirements of the defence are immaterial or irrelevant. Indeed, they are not, and none can suggest otherwise. But it is not for a court to suggest what should be the prescribed distance. That is a matter solely within the remit of the executive of the Union of India. The reasons why a particular establishment is noted as sensitive and as requiring a safety distance are also not justiciable matters for a court to consider. It may well be that the Defence believes that a particular installation requires greater safety and security than another. Those are not reasons that lend themselves to judicial review. But once those distances, limitations, restrictions, and norms are prescribed, they must at least be applied uniformly. That is all that we hold.”

102. We may also note two more decisions of the Division Bench of this Court. Firstly, in the case of **Dolby Builders Pvt. Ltd. & Anr.** (supra), in which the Court in fact had delved on the legality of the circulars to come to a conclusion that the Circulars dated 18 May, 2011, 18 March, 2015, 17 November, 2015 and 23 December, 2022 are illegal and quashed and set aside the same on the ground that restrictions on the right to property under Article 300A of the Constitution cannot be imposed by a mere executive fiat and if at all they are to be imposed, they must be imposed by following the procedure prescribed under the legislation occupying the field and in the present case the Works of Defence Act 1903. The Division Bench made the following observations:



“33. It would be thus clear that the Act 1903 is a comprehensive legislation and a complete Code, dealing with the restrictions to be imposed upon the use and enjoyment of the land in the vicinity of work of defence, the procedure to be followed for imposing the restrictions and compensating the property owner for imposing restrictions upon his right to property. Such being the nature of the Act 1903, it would be further clear that it is an enactment completely occupying the field of curtailing right to enjoy property of land-owners in the vicinity of Defence Establishments. It then follows that if any restrictions are to be imposed for use and enjoyment of the land in the vicinity of Defence Establishments, it must be done by issuing a declaration imposing restrictions by following the procedure prescribed in various provisions of Part-II, which also includes provision for payment of compensation for the abridgment of right of the property owner to use and enjoy his property. After-all, Act 1903, being a complete Code in the matter of restrictions to be imposed upon right to enjoy property, already occupies the field and, therefore, if any restrictions are to be imposed, they must be in accordance with this law, which occupies the field.

34. In the case of Satwaratna Co-op. Housing Society Ltd. & Anr. Vs. Bharat Petroleum Corporation Ltd. & Ors., the Apex Court has held that in the absence of any law which provides for a buffer zone between a refinery and the residential building, the owner of the land cannot be prevented from the right to use the land effectively including the right to carry out redevelopment and/or reconstruction in accordance with law and the rules and regulations with regard to the construction of buildings. We have already referred to the cases of B.K. Ravichandra and Ors. and T. Vijayalakshmi (Supra), which have held that right to property, which includes a right to construct a building, can be restricted only by reason of a legislation. In this case, at the cost of repetition, we must say that a comprehensive legislation governing the field of imposition of restrictions on use and enjoyment of land in the vicinity of Defence and Naval Establishments already occupies the field and, therefore, it has to be said that if any restriction is to be imposed, it must be by following the procedure prescribed under the legislation which occupies the field.

35. In the present case, the executive instructions issued in terms of the impugned circulars do not follow the procedure prescribed under the Act 1903; in particular, the procedure as prescribed under Section 3 of the Act 1903. There is no declaration issued by following the said procedure imposing restrictions upon use and enjoyment of land in the vicinity of INS Trata and therefore, the impugned circulars are inconsistent with the provisions of the Act 1903. Learned ASGI, however, submits that even the impugned circulars, being in the nature of executive instructions, can be relied upon pending consideration of intended amendments and/or approval of those amendments to the Act 1903. He relies upon the cases of S.S.V. Developers and Ors. Vs. Union of India, through Ministry of Defence and Ors.¹, Sunbeam Enterprises Vs. Municipal Corporation of Greater Mumbai and Ors. and TCI Industries Ltd. Vs. Municipal Corporation of Greater Mumbai and Ors.

36. The submission of learned ASGI now would have to be considered in the light of the law explaining the nature and effect of executive instructions issued by the Central Government under Article 73 of the Constitution of India or under Article 162 of the Constitution of India by the State Government. In the case of P.H. Paul Manoj Pandian Vs. P. Veldurai, it was held that there are two limitations; firstly, if any Act or law



has been made by the State Legislature conferring any function on any other authority, the Governor is not empowered to make any order in regard to that matter in exercise of his executive power nor can the Governor exercise such power in regard to that matter through officers subordinate to him and, secondly, the vesting in the Governor with the executive power of the State Government does not create any embargo for the legislature of the State from making and/or enacting any law conferring functions on any authority subordinate to the Governor. It was further held that once a law occupies the field, it will not be open to the State Government in exercise of its executive power under Article 162 of the Constitution to prescribe in the same field by an executive order. It was also held that it is well recognized that in the absence of any parliamentary legislation on the subject, the State Government has the jurisdiction to act and to make executive orders. It was further held that if any such orders were issued because of absence of the legislation, such orders by themselves would not offend the provisions of the Constitution, or any law, unless they were contrary to any express provisions of the Constitution or were repugnant to any enactment or the appropriate legislature. It was also held that when any legislation would exist, still such executive power can be exercised to fill in the gaps by issuing various departmental orders. Relevant observations of the Supreme Court, as they appear in paras 46 and 48, are reproduced thus :-

“46. Under Article 162 of the Constitution, the executive power of the State extends to matters with respect to which the State Legislature has power to make laws. Yet the limitations on the exercise of such executive power by the government are two fold; first, if any Act or law has been made by the State Legislature conferring any function on any other authority, in that case the Governor is not empowered to make any order in regard to that matter in exercise of his executive power nor can the Governor exercise such power in regard to that matter through officers subordinate to him. Secondly, the vesting in the Governor with the executive power of the State Government does not create any embargo for the legislature of the State from making and/or enacting any law conferring functions on any authority subordinate to the Governor.

48. The powers of the executive are not limited merely to the carrying out of the laws. In a welfare State, the functions of the executive are ever widening, which cover within their ambit various aspects of social and economic activities. Therefore, the executive exercises power to fill gaps by issuing various departmental orders. The executive power of the State is coterminous with the legislative power of the State Legislature. In other words, if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue government orders with respect to it, subject, however, to the constitutional limitations. Such administrative rules and/or orders shall be inoperative if the legislature has enacted a law with respect to the subject. Thus, the High Court was not justified in brushing aside the Government Order dated 16-11-1951 on the ground that it contained administrative instructions.

39. In the cases of TCS Industries Ltd., S.S.V. Developers and Sunbeam Enterprises, the view taken is that even if there is no notification issued under Section 3 of the Act 1903, the Planning Authority can always insist for NOC from the Defence Department if the property is situated just



adjacent to the Defence Establishment. In the case of S.S.V. Developers, it has been held that the guidelines issued by the Ministry of Defence vide its circular dated 18th May 2011 for issuance of NOC for building constructions are not arbitrary as the authorities issuing the guidelines found that the Works of Defence Act, 1903, which imposes restrictions upon use and enjoyment of the lands in the vicinity of Defence Establishments, needs to be comprehensively amended so as to take care of security concerns of Defence Forces and the process of amendment, already put in motion, may take some time and as such, in the interregnum, guidelines providing for necessary safeguards vis-a-vis Defence Establishments can be issued by the Ministry of Defence, which guidelines include regulation of grant of NOC. It is further observed that the objective of these instructions is to strike a balance between security concerns of the Defence Forces and the right of public to undertake construction activities on their lands and, therefore, even if the 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 could be a security hazard, he can, after seeking confirmation from his own higher authority in the chain of his command, refuse to grant NOC for construction of such building.

40. In our respectful submission, the view so taken in the afore-stated cases of TCI Industries Ltd., S.S.V. Developers and Sunbeam Enterprises does not take into consideration the law settled in this regard by the Supreme Court in the cases discussed earlier, in particular the cases of P.H. Paul Manoj Pandian and Bishambhar Dayal Chandra Mohan, which cases have been followed by another Coordinate Bench of this court very recently in the case of Runwal Constructions. Then there is also a body of law subsequently developed by the Apex Court in the cases of B.K. Ravichandra, Satwaratna Housing Society and T. Vijayalakshmi, which hold the field today and lay down in no uncertain terms that in the absence of any law providing for curtailment of right to enjoy the property, which is a valuable right under Article 300A of the Constitution of India, no person can be subjected to any restriction upon his right to construct a residential house in the residential area. The meaning of the word "law" has been explained in the case of Bishambhar Dayal Chandra Mohan, which we have already discussed earlier, and it does not include a circular issued in exercise of executive power of the Central Government or the State Government at a time when the relevant legislation already occupies the field. This subsequent body of law, together with the law settled by the Apex Court in the cases discussed earlier, which were prior to the judgments in the cases of TCS Industries Ltd., S.S.V. Developers and Sunbeam Enterprises, now constitutes an authoritative pronouncement for a proposition that restrictions upon use and enjoyment of land can be imposed only under an authority of law and when a relevant law, like the Act 1903, is occupying the field already, by device of executive instructions, no restrictions can be imposed on use and enjoyment of the land, though by the executive instructions only gaps in legislation can be filled. Therefore, we are of the view that the said cases of TCS Industries Ltd., S.S.V. Developers and Sunbeam Enterprises relied upon by respondent nos.3 to 6 would render no assistance to them.

44. In the present case, we have already found that the impugned



circulars have not been issued in accordance with the provisions made in Section 3, read with Section 7, of the Act 1903 and there being already occupation of the field by the Act 1903, no restrictions could have been imposed upon use and enjoyment of the subject property by mere executive instructions and, therefore, we find that the impugned circulars are ultra vires the provisions of the Works of Defence Act, 1903 and as such are invalid, deserving to be quashed and set aside by this court. The first question, i.e. Whether the impugned circulars dated 18th May 2011, 18th March 2015 and 17th November 2015 issued by Ministry of Defence are ultra vires the Works of Defence Act, 1903, is answered accordingly.

48. In the present case, however, the comparison sought to be made by learned Senior Advocate for the petitioners between proposed building of the petitioners and the other taller buildings situated nearby or in the vicinity of INS Trata so as to justify construction of a much shorter building is uncalled for as there is no specific material available on record to enable the court to find the distinction made by respondent nos.3 to 5 in these two sets of buildings to be absurd. We are, therefore, of the opinion that reliance placed by the petitioners upon the comparison between two sets of buildings standing in the vicinity of INS Trata in order to justify their case is incorrect.”

103. The other decision is in case of **Union of India vs. The State of Maharashtra & Ors.** (supra) in which the Union of India challenged the Commencement Certificate which was issued in favour of respondent no.3 – Kappa Realtors LLP, being plots of land situated which are in close proximity to the Unit of Southern Command Composite Signal Regiment *inter alia* praying that said developer be restrained from carrying out any construction within 100 mtrs. from the boundary of the said defence establishment and also demolish the construction as undertaken. It is in such context, the guidelines issued vide circular dated 18 May, 2011 were pressed into service. The Court dismissing the writ petition filed by the Defence, made pertinent observations including referring to the decision of the Division Bench in **Dolby Builders Pvt. Ltd. & Anr.** (supra) as also the settled position in law in regard to rights guaranteed under Article 300A of the Constitution. Following observations were made by the Court while dismissing the Writ Petition filed by the Union of India:



“30. There is one more perspective from which the controversy involved in the present case is required to be examined. All the circulars above referred to, which are issued by the Ministry of Defence, are in the nature of guidelines and none of them appears to be issued in the name of the “President”. Article 77(1) of the Constitution of India mandates that all executive actions of the Government of India shall be expressed to be taken in the name of the “President”. Similar were the facts involved in the case of Jambo Plastics Pvt. Ltd. and Anr. Vs. Chief Quality Assurance Establishment (Warship Equipment), Ministry of Defence, Bangalore and Ors., before the learned Single Judge of the Karnataka High Court, where the circular in question, the same circulars dated 18th May 2011, 17th November 2015 and 21st October 2016, not issued in the name of the President, were at issue. In that case, the question was as to whether the circulars dated 18th May 2011, 17th November 2015 and 21st October 2016 constituted an order affecting right of the parties or not? The learned Single Judge, relying upon the decision of the Apex Court in the State of Uttaranchal and Anr. Vs. Sunil Kumar Vaish and Ors., held that these circulars or guidelines not having been issued in the name of the President, as required under Article 77(1) of the Constitution of India, could not be relied upon by the Union Government to impose any restrictions as long as the Works of Defence Act, 1903 was in operation and was not amended. The learned Single Judge in his judgment reproduced the relevant observations of the Apex Court in the said case of State of Uttaranchal (Supra), which read thus :-

“24. The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2)...”

31. Having regard to the aforestated observations of the Apex Court, which have been followed by the learned Single Judge in the case of Jambo Plastics Pvt. Ltd. (Supra), we have no hesitation to hold that all the aforestated circulars, which have been relied upon by the petitioner, not having been issued in the name of the President, as mandated by Article 77(1) of the Constitution of India, have not culminated into an order affecting right of the petitioner to enjoy his property as per his free will, subject to limitations of law. These circulars, which have been relied upon by the petitioner, would not, therefore, confer any right upon the petitioner to seek any prohibition upon ongoing construction and even demolition of the construction of the building already made.

31. There is yet another aspect of the matter which we must take into consideration. In the case of Dolby Builders Pvt. Ltd. and Anr. Vs. The Municipal Corporation of Greater Mumbai and Ors., the issue involved was about power of the Union of India to curtail right to enjoy property of land owners situated in the vicinity of Defence Establishments by imposing restrictions thereupon by the executive instructions. This court, while deciding the issue, took into consideration the nature of the right to property, a constitutional and human right, as explained in the following cases :

- B.K. Ravichandra and Ors. Vs. Union of India and Ors.
- Delhi Airtech Services Pvt. Ltd. Vs. State of U.P.
- State of Rajasthan Vs. Basant Nahata
- T. Vijayalakshmi and Ors. Vs. Town Planning Member and Anr.



- > Hari Krishna Mandir Trust Vs. State of Maharashtra and Ors.
- > Runwal Constructions Vs. Union of India, through Ministry of Defence and Ors.
- > Satwaratna Co-op. Housing Society Ltd. & Anr. Vs. Bharat Petroleum Corporation Ltd. & Ors.

32. This court, considering the above referred law, held that right to property under Article 300A of the Constitution of India is a valuable right, equated with a human right, and it enables a property owner to enjoy his property as per his free will, though within the limits of law operating in the field. This court further took the view, in deference to the said case law, that right to property under Article 300A of the Constitution of India includes right to construct a building and if any restrictions are to be imposed upon the same, it can be done only by authority of the law. This court, following the law laid down by the Apex Court in the case of Bishambhar Dayal Chandra Mohan and Ors. Vs. State of Uttar Pradesh and Ors., along with connected matters¹, held that no person can be deprived of his property save by authority of law and the deprivation of property must come under the authority of law and that the word "law" in the context of Article 300A must mean an Act of Parliament or of a State Legislature or a Rule or a Statutory Order having the force of law, which is a State-made law or a positive law. This court then held, considering the judgment of the Apex Court in the case of P.H. Paul Manoj Pandian Vs. P. Veldurai, that when a Central or a State Legislation occupies the field, the field of placing restrictions upon right to enjoy land or property situated in the vicinity of Defence Establishments, no restrictions can be imposed upon right to enjoy property by a mere executive instruction and if at all they are to be imposed, they must be imposed by following the procedure prescribed in the legislation occupying the field.

33. This court, in Dolby Builders Pvt. Ltd. (Supra), also distinguished the cases of S.S.V. Developers and Ors. Vs. Union of India, through Ministry of Defence and Ors., Sunbeam Enterprises Vs. Municipal Corporation of Greater Mumbai and Ors. and TCI Industries Ltd. Vs. Municipal Corporation of Greater Mumbai and Ors.. relied upon by Ministry of Defence and held that those cases would not be applicable to the facts of the case in hand. These cases are also referred to by the petitioner here. But, the situation of this case, on facts and law, being substantially similar as that of Dolby (Supra), these cases would not be applicable here for the same reasons as stated in Dolby (Supra).

34. There were some other cases which were relied upon in Dolby (Supra). These cases are as under :-

- > Hindustan Petroleum Corporation Ltd. Vs. Municipal Corporation of Greater Mumbai.
- > Oswal Agro Mills Ltd. Vs. Hindustan Petroleum Corporation Ltd. and Ors.
- > Gorakhnath Shankar Nakhwa and Ors. Vs. Municipal Corporation of Greater Mumbai and Ors.



- > Union of India, through Indian Army Vs. State of Maharashtra, through Urban Development Department and Ors.
- > Vikram Delite Co-operative Housing Society and Ors. Vs. Union of India, through the Ministry of Defence and Ors.

35. The aforesaid cases are also relied upon by the petitioner in the present case. These cases were found to be of not any assistance to the Ministry of Defence in the case of *Dolby (Supra)* in view of the fact that a Central Legislation was occupying the field and, therefore, curtailment of right to property could not have come through the executive instructions. Similar is the position here and, therefore, the said cases would render no assistance to the petitioner here.

36. In *Dolby (Supra)*, this court also considered the provisions of the Works of Defence Act, 1903 and held that it was a comprehensive legislation and a complete Code dealing with the restrictions to be imposed upon the use and enjoyment of land in the vicinity of Works of Defence Act and, therefore, the procedure, as prescribed therein for imposing restrictions and also compensating the property owner for such restrictions, must be followed and this cannot be done by any executive instructions. The relevant observations of this court are to be found in paragraph 38 of the judgment in *Dolby Builders Pvt. Ltd. (Supra)*, which paragraph is reproduced as below :-

“38. The sum and substance of the above referred discussion is that now it is well settled law that when a Central or State legislation occupies the field; in the present case, the field is of placing of restrictions upon use and enjoyment of land or property situated in the vicinity of Defence Establishments, including Naval Establishments, such restrictions cannot be imposed by a mere executive fiat and if at all they are to be imposed, they must be imposed by following the procedure prescribed under the legislation occupying the field; in the present case the Act 1903, and that deprivation of right to property or curtailment of the right to property, as envisaged under Article 300A of the Constitution of India, can be done only under the authority of law and the word “law”, in the context of Article 300A, must mean an Act of Parliament or a State legislature, or a rule or a statutory order, having the force of law, which, in other words, is a State-made law or a Positive Law¹ as per the theory of Legal Positivism propounded by Scholars Jeremy Bentham and John Austin.”

37. In the present case, we have found that the afore-stated circulars of the Ministry of Defence are not even in the nature of executive instructions. Rather, they fall under a category of only departmental circulars binding upon the officers of the department and not the outsiders or third parties. This category is even below the category of executive instructions of the Central Government, which instructions would operate until otherwise provided by Parliament, as provided under Article 73(2) of the Constitution of India. It would then follow that the law applicable to the executive instructions in a case where the field is already occupied by the Central Legislation, as in the present case, would be applicable with even greater force to the office circulars which are not issued in the name of the “President”, contrary to mandate of Article 77(1) of the Constitution of India. For this reason also, the aforesaid



circulars cannot be relied upon by the petitioner so as to make an attempt to restrict the right of the petitioner to enjoy its property, which includes right to make construction in accordance with the permission granted in that regard by the Competent Authority, which permission is already granted to the petitioner way back on 8th August 2008.

38. We thus find that there is no merit in the petition. The petition stands dismissed. The interim order dated 7th April 2021 is vacated. Respondent No.2 is directed to issue occupancy certificate in accordance with law within eight weeks from the date of the judgment”

(emphasis supplied)

104. The aforesaid decision of the Division Bench in **Union of India vs. The State of Maharashtra & Ors.** (supra) was assailed by the Union of India before the Supreme Court in the proceedings of Special Leave Petition (Civil) Diary No. 13483/2024. The said SLP was dismissed by the Supreme Court vide order dated 27 September, 2024 wherein the Supreme Court categorically observed that the Court had heard learned ASG for the petitioner and learned senior counsel for respondent no. 3/caveator and had perused the material on record. It was observed that having regard to the facts and circumstances of the case, the Court was not inclined to interfere in the matter and accordingly dismissed the SLP. The order dated 27 September, 2024 is required to be noted, which reads thus:

“ We have heard Ms. Aishwarya Bhati, learned ASG for the petitioner and learned senior counsel for caveator/respondent no. 3 and perused the material on record.

Having regard to the facts and circumstances of this case, we are not inclined to interfere in the matter. The Special Leave Petition is hence dismissed.:

105. We may also observe that the decision in **Dolby Builders Pvt. Ltd. & Anr.** (supra) was also assailed by the Union of India before the Supreme Court in the proceedings of SLP(C) No. 28519/2023, which came to be disposed of in terms



of consensual arrangement between the parties in terms of the order dated 22 January, 2024. The said order is required to be noted, which reads thus:

“ Issue notice to the respondent.

Mr. Umesh Kumar Khaitan learned AOR accepts notice on behalf of the respondents.

Leave granted.

We have heard learned Additional Solicitor General for the appellants, learned senior counsel Mr. Mukul Rohatgi for respondent nos. 1 and 2 and Mr. Maninder Singh for respondent nos.3 and 4 and learned counsel Mr. Siddharth Dharmadhikari for the respondent-State.

The appellants are aggrieved by the impugned judgment of the division bench of the Bombay High Court and particularly the operative portion thereof which, for immediate reference, is extracted as under:

- i. Petition is partly allowed.
- ii. The Circulars dated 18th May, 2011, 18th March 2015, 17th November 2015 and 23rd December 2022, issued by respondent nos.3 to 6 are quashed and set aside.
- iii. The impugned letter dated 9th March, 2021 issued by respondent nos.4-Flag Officer, Commanding-in-Chief, as a consequence, is also quashed and set aside.
- iv. Respondent no.1-MCGM is directed to process the application of the petitioners dated 6th June, 2019, without the requirement of any NOC from respondent nos.3 to 5, and take an appropriate decision thereon in accordance with law within a period of four months from the date of the order.
- v. Petition is disposed of in the above terms.

Learned ASG appearing for the appellants submitted that Direction no.2 by which the circulars dated 18th May, 2011, 18th March 2015, 17th November 2015 and 23rd December 2022 are quashed is a direction in rem whereas the respondent-writ petitioner before the High Court have assailed them only insofar as the said petitioners are concerned. Therefore, the impugned order insofar as the second direction is concerned being a direction in rem may be set aside in this appeal.

He further submitted that the other directions which have been issued vis-a-vis the respondents-writ petitioners before the High Court are concerned would seriously affect the security and defence and the apprehensions expressed by the appellants herein being serious that portion of the directions also may be stayed and set aside.

Per contra, learned senior counsel Mr. Mukul Rohatgi



appearing for the respondents-writ petitioners before the High Court submitted that the building which has now been demolished for the purpose of reconstruction comprised of ground + two floors with a height of 12 metres which was in existence since the mid of 1940s. That the petitioners herein had no concern regarding security or any other concern vis-avis the old building which was standing on the subject land. It is only now, when a new building of a similar height and dimension which is sought to be built that the appellants have sought to raise issues of security and defence etc. That all along when the erstwhile building stood on the subject land, there was no objection whatsoever raised by the appellant Naval Authorities. Therefore, there is absolutely no reason whatsoever for declining the grant of no objection to the respondent-writ petitioners before the High Court.

It was also submitted by learned senior counsel Mr. Mukul Rohatgi that if the directions issued by the High Court vis-avis the respondent-writ petitioners before the high Court are confined to these respondents only and there is also compliance of the same then respondent-writ petitioners before the High Court may not press their pleas regarding the vires of the aforesaid Circulars. In other words, 'no objection' may be granted to the respondent-writ petitioners before the High Court to develop the subject land, having regard to the averments and pleas taken by them before the High Court and on which basis relief has been granted to them. That the respondent-writ petitioners before the High Court shall strictly abide by the pleas taken by them before the High Court and on the factual matrix that has been presented to the High Court.

Having regard to the submissions made at the Bar, we find that the directions issued by the High Court vis-a-vis the relief sought for by the respondent-writ petitioners before the High Court insofar as the issuance of the 'No Objection Certificate' and other directions are concerned shall be complied with by the appellants within a period of one month from today. On such compliance being made it is recorded that the respondent writ petitioners before the High Court shall not press their pleas with regard to the vires of the aforesaid circulars and the same shall stand withdrawn.

Needless to observe that this submission made on behalf of the respondent-writ petitioners before the High Court is with regard to the compliance to be made by the appellants vis-a-vis only respondent-the writ petitioners before the High Court.

It is further needless to observe that if any other party has assailed the vires of the said Circulars before the High Court or this Court, the said parties are at liberty to advance all arguments on the vires of the said circulars in accordance with law.

With the aforesaid observations and directions, the appeal stands partly allowed and disposed of.

Consequently, the impugned directions of the High Court stand modified in the aforesaid terms.

Pending application(s), if any, shall also stand disposed of."

(emphasis supplied)



106. Having considered the legal position insofar the circulars issued by the Ministry of Defence are concerned, we now advert to the contention as addressed on behalf of the parties in regard to the applicability of Regulation 59 of the DCPR-2034. We find ourselves in complete agreement with Mr. Kadam in regard to the applicability of Regulation 59 of DCPR, 2034. Regulation 59 provides for “Special Purpose NOCs, which reads thus:

“59. Special Purpose NOCs - Wherever necessary, special purpose NOCs shall be required to be submitted for the development of plot/s depending upon the location & type of work as specified in these Regulations. Observance of requirements of these and all other NOCs shall be the responsibility of Owner/Developer/Project Proponent. The Commissioner may grant permissions/approvals for development based on an undertaking by the Owner/Developer/Project Proponent that he shall comply with all the requirements of special NOCs, Laws, and Regulations that are applicable from time to time. **The illustrative list of special purpose NOC’s is mentioned in Appendix III.”**

107. The Special Purpose NOCs as provided in Appendix III at Sr. No. 5 reads thus:

Sr.No.	Authority	Location
5.	Defence	Required by the Defence Authority around defence installation and as notified by Urban Development Department, GoM.

108. It is thus clear from a reading of Regulation 59 (supra) that, wherever necessary, special purpose NOCs are required to be submitted for the development of plot/s, depending upon the location and type of work as specified in the said Regulations. Further, the observance of requirements of NOCs shall be the responsibility of Owner/Developer/Project Proponent. The Commissioner may, however, grant permissions/approvals for development based on an undertaking by the Owner/Developer/Project Proponent that all the



requirements pertaining to special NOCs, Laws, and Regulations shall be duly 2026:BHC-OS:11560-
complied with, from time to time. Regulation 59 is required to be read in the
context of the illustrative list of special purpose NOC's as set out in Appendix III,
in the present case, sr. no. 5 (supra).

109. Insofar as the defence NOC is concerned, such requirement as stipulated
in sr. no. 5 (Appendix III) (supra) is to the effect of a “*NOC required by Defence
Authority around defence installations and as notified by the Urban
Development Department, Government of Maharashtra*”. It is composite in
nature, i.e., entails, firstly, a requirement of the Defence Authority in respect of
construction around the defence installation, and secondly, such requirement
must be notified to that effect by the Urban Development Department,
Government of Maharashtra. Thus, sr. no. 5 cannot be read disjunctively; it
must necessarily be read conjunctively inasmuch as the issue in regard to
planning and construction falls within the domain of the Urban Development
Department, Government of Maharashtra, being the principal authority under
the provisions of Maharashtra Regional and Town Planning Act, 1966 (“MRTP
Act”). The Planning Authority functions under the directives of the State
Government as per the scheme of the MRTP Act. Thus, the ultimate control
over the grant of building permission vests in the Planning Authority and under
the directives of the State Government.

110. The issuance of defence NOC is something which touches the building
permissions being granted under the MRTP Act, which is exclusively within the



authority and domain of the State Authorities and not the defence authorities. It is for such reason, sr. no. 5 of Appendix III (supra) in regard to defence NOC cannot be read disjunctively, as it is required to have a dual effect on the defence authorities being required to consider an application for NOC for the reason that the construction is around the defence establishment and the same needs to be accepted by the State Authorities, i.e., Urban Development Department.

111. If the word “and” in sr. no. 5 is to be read as “or”, in our opinion, it would lead to an absurdity and lead to a chaotic situation, as invariably constructions at the discretion of defence authority would require NOC and such unilateral imposition of such condition without consultation with the State Government, would give rise to an unwarranted situation in the matters of planning and development permission. It is in such context, Hon’ble Chief Minister addressed a letter dated 19 January, 2016 to the Hon’ble Defence Minister seeking clarification in regard to the applicability for the Circulars. Further, as held by the Division Bench of this Court in **Dolby Builders Pvt. Ltd.** (supra) as also followed in **Union of India vs. State of Maharashtra** (supra), as upheld by the Supreme Court, mere circulars issued by the Ministry of Defence cannot in any manner become binding on the State Government or alter or obliterate the operation of the provisions of the State law, namely, MRTP Act as also the DCPR, 2034.

112. In this view of the matter, we are not inclined to accept Mr. Govilkar’s submission on Regulation 59 being read in a manner as if it provides a *carte*



blanche to the defence authorities to foist mandatory NOCs. Also, for such reason, the petitioner could not have been unilaterally imposed of such requirement of NOC and for such purpose, the impugned stop work notice as also withholding of Occupation Certificate would be required to be held to be arbitrary and illegal.

113. Now we discuss the decisions relied on behalf of respondent no. 3. Insofar as reliance on behalf of respondent no. 3 to the decision in **Gorakhnath Shankar Nakhwa & Ors.** (supra) as also to the decision of **Vikram Delite Co-operative Housing Society Ltd.** (supra) are concerned, the same are not well-founded inasmuch as these judgments do not concern the issue as arisen in the present petition, namely, the fresh circular issued by MoD dated 23 December, 2022 and the subsequent circular dated 23 February, 2023 keeping the same in abeyance. As also considering the facts of the present case and our aforesaid discussion, these decisions in no manner would assist respondent no. 3 as also for the reason that 18 May, 2011 guidelines are no longer in existence and stood extinguished, being suspended by Circular dated 23 December, 2022.

114. Also the decision in the case of **Union of India through the Indian Army vs. State of Maharashtra through the Urban Development Department & Ors. (Adarsh case)** (supra) would not assist respondent no. 3 in regard to the observations which are in respect of concerns of security. The decision in Adarsh case was completely in different set of facts, however, in view of the clear position as brought about by Circular dated 23 December, 2022 and so far as the



applicability to the petitioner's project in terms of what has been described in paragraph 2(ii) of the said guidelines, certainly such concerns as noted by the Court in the case of Adarsh are not applicable. The reason also being that the Ministry of Defence, itself taking a position of within 50 meters radius in relation to construction as categorized in paragraph 2(ii) of the guidelines dated 23 December, 2022. Further, the consequence as brought about by Circular dated 23 February, 2023 keeping 23 December, 2022 in abeyance, has already been discussed by us hereinabove.

115. Considering the above discussion, we do not find any substance in the contentions as urged on behalf of the respondent to the effect that the guidelines dated 18 May, 2011 were at all applicable and that it was necessary for the petitioner to first obtain NOC from respondent no. 3 in regard to its construction and much importantly considering the decision of the Division Bench in **Union of India vs. The State of Maharashtra & Ors.** (supra), as held by the Supreme Court in dismissal of the SLP No. 13483 of 2024 vide order dated 27 September, 2024.

116. While concluding, we may observe that the issues concerning the insistence on a No Objection Certificate (NOC) from defence authorities require an appropriate non-arbitrary, fair and reasonable approach by the concerned authorities strictly as per the requirement of law. If the plea of the Defence regarding security concerns and threat perception in reality has any basis, all steps which the law would warrant are required to be taken at the very beginning of



any construction activity. The Defence authorities taking a position that they have no control on the civilian areas*, is no answer to any realistic threat/security perception. There cannot be a casual approach in such matters and more particularly, like in the present case, where construction has progressed substantially in accordance with the sanctioned plans and the permission granted by the planning authority. The Constitution under Article 300A guarantees the right to property. Such right cannot be infringed or prejudiced in a manner not recognized by law. It is, therefore, incumbent upon the Defence authorities, in consultation with the planning authorities, to adopt a realistic and legally sustainable approach to situations which are realistically objectionable in law. In the present case, considering that in the vicinity of INS Trata, large number of buildings already exist, some of which remain undisturbed which have even been constructed without obtaining an NOC, some being granted NOC, we are of the opinion that the requirement of NOC cannot be selectively insisted/foisted by respondent no. 3. Furthermore, the prescribed distance norms, stand varied from time to time, in the versions, the different circulars set out, which are purely internal to the Ministry of Defence and which are being foisted on the Planning Authority operating under the State laws.

117. We are, thus, of the clear opinion that, in respect of each Defence establishment, if the law so permits, the need is to the effect that instead of issuing general circulars, a clear and definite policy needs to be formulated strictly in accordance with law, and not otherwise. This more particularly considering the

* (See reply affidavit on behalf of respondent No.3).



provisions of Works of Defence Act, 1903 are available or for that matter, if any other law is applicable. Insofar as INS Trata is concerned, considering the surrounding habitation and the existence of several buildings in close proximity, and further considering that the petitioner's building is situated beyond the prescribed norms as discussed hereinabove, the insistence on obtaining an NOC at the final stage of construction as held by us was arbitrary. In fact this ought not to be the approach in respect of any of such projects, that only when constructions, which otherwise are legal are at the stage of completion, insistence for NOC is being made, without realistic steps being taken at the right time, as law would otherwise require, in the event perception of Defence is genuine and realistic.

118. In the light of the aforesaid discussion, we answer the questions as framed by us as under:

- i) Answer to question no. 1 – In the facts and circumstances of the case, the insistence by respondent no. 3 – Naval authorities of a NOC in regard to the petitioner's construction was illegal, invalid and unjustified.
- ii) Answer to question no. 2 – The action of MHADA in granting Commencement Certificate to the petitioner from time to time permitting completion of the entire construction by the petitioner was legal and valid.
- (iii) Answer to question no. 3 - The impugned stop work notice dated 24 October, 2025 and the impugned



communication dated 29 October, 2025 rejecting the petitioner's application for an Occupation Certificate on the ground of petitioner having not obtained NOC from respondent no. 3 are actions which are arbitrary and illegal. Respondent no. 3 was under legal obligation to grant occupation certificate and it could not issue the impugned stop work notice in the light of the aforesaid discussion.

119. As a result, we are of the clear view that the petition needs to succeed. It is accordingly allowed in terms of prayer clauses (a) and (b).

120. We clarify that considering the view taken by the Division Bench in the case of **Union of India vs. The State of Maharashtra & Ors.** (supra), which has been confirmed by the Supreme Court in dismissing the SLP (Civil) Diary No. 13483/2024 by order dated 27 September, 2024, we do not delve on prayer clause (c) in which the petitioner has challenged the validity of the Circulars as issued by MoD.

121. Rule is made absolute in the aforesaid terms. No costs.

122. In view of disposal of Writ Petition, Interim Application would not survive and the same is accordingly disposed of.

123. At this stage, learned Counsel for Respondent No.3 has prayed for stay of the operation of the judgment. The same is being opposed on behalf of the petitioner, as also on behalf of 72 members of respondent No.4 Society, who are



very anxiously awaiting for taking possession of their tenements. The request is also opposed on behalf of the flat purchasers in the sale building. Considering that the project is already delayed and the view we have taken, the request for stay is rejected.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)