

(H.F.)

ISSUED

BRIHANMUMBAI MUNICIPAL CORPORATION

No. Dy.Ch.E./B.P./10950/W.S.-II/P&R, dtd. **26 APR 2024**

Subject: - Clarification for seeking comments from the Local Military Authorities (LMA) / Defence Establishments for granting approvals to ongoing development proposals and for proposed constructions within the 500 meters periphery of Ordnance Depot at Kandivali /Malad, Mumbai.

- Reference: -**
- 1) Interim Instructions issued under guidelines u/No.11026 /2 /2011/ D (Lands) Government of India, Ministry of Defence, New Delhi dt. 18.05.2011 (Pg. 52 to 55).
 - 2) Guidelines No. P.11026/2/2011/D (Lands) Govt. of India, MoD, dtd.21.10.2016. (Pg. 39 to 60).
 - 3) UDD Circular No. CRZ-1215/1093/S.N.40/15/UD-12, dtd.07.11.2016. (Pg. 61 to 65).
 - 4) Hon. M.C.'s Letter U/No. MCP/6085 dtd 20.07.2019
 - 5) U.D. Dept. Clarification U/No. TPB-4319/S.N.-124/019/UD-11 dtd. 19.08.2019.
 - 6) Dy.Ch.E.(B.P.)/3989/WS P&R dtd 08.10.2021
 - 7) Hon. M.C.'s Directions u/No. MCP/2112 dated 02.01.2021
 - 8) CHE/17109/DP/WS dated 09.11.2021
 - 9) CHE/17110/DP/WS Dated 10.11.2021
 - 10) Letter from Dy. Comdt. COD Kandivali dtd.18.01.2023, received in this office on 23.01.2023 along with MoD's Fresh Guidelines U/No. F. 1102620/2011/D(Lands)dtd. 23.12.2022. (Pg. 154 to 155).
 - 11) Representation submitted to UDD for further order vide No.CHE/DP/ 28611 dtd 14.02.2023
 - 12) MOD's Letter for abeyance of Guidelines dtd 23.02.2023
 - 13) UDD's Clarification regarding revised guidelines dtd 23.12.2022 vide No. टीपीबी-२०१९/ प्र. क्र. १२४/२०१९/नवि-११ दि. १९.०४.२०२३
 - 14) Several correspondences received from Major, OIC Land & Legal requesting to issue Stop Work Notices to ongoing Constructions in Vicinity of COD, Kandivali
 - 15) Several correspondences received from Col, SO (Land & Legal) requesting to issue Stop Work Notices to ongoing Constructions in Vicinity of COD, Kandivali and Malad
 - 16) Letter of Maj, OIC Land & Legal informing this office regarding the Stop Work Notice issued by SRA to the Development Project situated in the vicinity of COD, Kandivali dtd 09.09.2023 and received in this office on 13.09.2023.

17) Hon'ble High Court order in WP 2724 of 2021 dtd 27.09.2023

18) Clarification of UDD with respect to Hon'ble High Court order dtd 27.09.2023 U/No. TPB-4323/UOR40/Pr.Kr.125/2023/UD-11 dtd 03.11.2023.

19) Letter received from Shri. SK Jaini, Brigadier (Station Commander) U/No. 3271/Policy/Legal dtd 09.02.2024

With reference to subject matter, this office is in receipt of letter from Maj, OIC Land & Legal, COD Kandivali vide reference No.16 above along with copy of Stop Work Notice issued by SRA to the Development project in the vicinity of COD Kandivali on dtd. 12.05.2023 and requested this office to issue Stop Work Notices to all ongoing Developments within 500 Mtrs periphery of COD Kandivali.

Gist of the case: -

By guidelines dated 18.05.2011 referred to at Ref. No. 1, interim instructions were issued to regulate the grant of NOC for construction within the outer periphery of 500- Metres of radius of Defence Establishment. The interim instructions were forwarded to MCGM on 10.02.2012. The said interim instructions were modified by Circular dated 18.03.2015 (as at Pg. No. C-33) and 17.11.2015 (as at Pg. No. C-35). As difficulties were being faced by public in constructing building on their own land and, in view of large number of representations of elected representatives, pending finalization to the Works of Defence Act 1903, in consultation with the services, the Ministry of Defence vide their guidelines dated 21.10.2016, amended the interim instructions dt. 18.05.2011, wherein the requisition to procure No Objection Certificate was reduced from 500 meters to 10 meters. In lieu of and pursuant to the amended guidelines issued by the Ministry of Defence, Government of India, the Government of Maharashtra issued a circular dtd. 07.11.2016 directing that, proposals for approval for construction, outside the 10 meters distance from periphery of the Defence Establishment are to be approved and that the effect of the directions are to be implemented with immediate effect.

Accordingly, this office started processing proposals for permissions to constructions falling beyond 10 Mtr distance from periphery of COD Kandivali and COD Malad. However, in view of various correspondences received from Authorities of COD Kandivali and COD Malad this office submitted report to then Municipal Commissioner. (As at Pg. No. N-1 to N-6)

After perusal of same, Hon. M.C. has vide letter u/No. MCP/6085 dt.20.07.2019 (as at Pg. No. C-93 to C-95) sent correspondence to The Principal Secretary, Urban

Development, Govt. of Maharashtra and a copy to Hon'ble Chief Secretary, State of Maharashtra seeking clarification to process the proposals without obtaining NOC from Local Military Authority (LMA) in the vicinity of Defence establishment having distance more than 10 Mtr. from the outer wall of Defence establishment. In accordance to the above referred letter, Deputy Secretary, Urban Development Department, Maharashtra state has sent reply to Hon'ble Municipal Commissioner u/ No.टीपीबी -4319/ प्र. क्र. 124/2019/नवि-11 dt. 19.08.2019 (as at Pg. No. C-113). Same is reproduced as below;

“ केंद्र शासन, संरक्षण मंत्रालयाने त्यांचेकडील पूर्वीची दि.18.05.2011 रोजीची मार्गदर्शक तत्वे सुधारित करून दि. २१.१०.२०१६ रोजी निर्गमित केलेली आहेत. तसेच त्याअनुषंगाने नगर विकास विभागाने दि. ०७.११.२०१६ रोजी परिपत्रक निर्गमित केलेले आहे. केंद्र शासन, संरक्षण मंत्रालयाकडील दि. २१.१०.२०१६ चे मार्गदर्शक तत्वांचे पुनर्विलोकन (Review) झाले नसल्याने दि.२१.१०.२०१६ रोजीची मार्गदर्शक तत्वे व त्याअनुषंगाने शासन नगर विकास विभागाने निर्गमित केलेले दि. ०७.११.२०१६ रोजीचे परिपत्रक सदयस्थितीत लागू असल्यामुळे ते विचारात घेऊन महापालिकेने प्राप्त होणाऱ्या प्रस्तावांवर कार्यवाही करावी.”

Thereafter, on receipt of several correspondences from COD Kandivali and Hon'ble M.P. Shri Gopal Shetty this office had submitted report to Hon. M. C. vide reference No.6 above. Wherein, vide reference No. 7 above Hon. M. C. endorsed that, *“We had referred the matter to UDD earlier. UDD has clarified twice on 19.08.2019 and 22.06.2020 that circular issued by UDD, GoM dated 07.11.2016 is applicable at present. Hence, Defence authorities shall be replied mentioning above and that they should approach UDD, GoM. MCGM Shall follow UDD directions. The copy of letter to be written to Defence Authorities shall be forwarded by Ch.E.(D.P.) to U.D. Dept. for perusal and further directions if any.”*

Accordingly, vide reference No. 8 above Ch.E.(D.P.) informed Major Cheetri, OIC Land & Legal for Comdt, COD Kandivali to approach U.D.D., GoM for further directions(as at Page No. C-329). And also vide reference No. 9 above has forwarded the copy of the same to Under Secretary, UDD vide letter dtd 10.11.2021 (as at Page No. C-331)

Further, Ministry of Defence (MoD), Government of India has issued fresh guidelines dtd. 23.12.2022, (Copy as at Page No. C-543) which mentions that the said guidelines are in supersession to the circular dtd. 18.05.2011, amendments circular dtd. 18.03.2015, 17.11.2015 & NOC guidelines dtd. 21.10.2016. The reference of the Defence Establishments of Army situated in Mumbai is mentioned at serial No. 108 of

the Annexure "A" of the said guidelines dtd. 23.12.2022 as "Mumbai Less Ordnance Depot" i.e. Ordnance depots in Mumbai are excluded from Annexure 'A'.

The relevant applicable content of the Circular dated 23.12.2022 as regards to the Central Ordnance Depot of Kandivali and Malad is reproduced under:-

"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."

Further it is to mention here that, several multi-storeyed buildings already existing within 500 meters from the periphery of the Ordnance Depot (Army Establishment) of Kandivali and Malad even prior to May, 2011. The entire area is densely populated. Google image showing the present position of the existing buildings approximately falling within the 500 Mtr. distance from periphery of the Ordnance depot of Kandivali and Malad be seen at (Page No. C-581). Several buildings situated in the vicinity of COD Kandivali & COD Malad are constructed prior to 1960, some of these buildings are in extremely dilapidated conditions. Several multi storied buildings are already re-developed. Several projects are already granted various approvals, for which construction work is at various stages. Approvals for proposals beyond 10 meters from Periphery of COD Kandivali & COD Malad are already granted post the MoD's guidelines dt. 21.10.2016, and as per the UDD Circular dt. 07.11.2016 issued by the Government of Maharashtra. As approvals are granted post the UDD Circular dated 07.11.2016, now imposing condition for procuring comments/NOC from the LMA/ Defence Establishment as regards to the construction beyond 10 Metres distance from periphery of Defence Establishment and withholding further permissions to ongoing proposals is not appropriate.

Accordingly, letter to seek further directions with reference to fresh guidelines issued by MoD dtd 23.12.2022 was sent to UDD vide reference No.11 above (as at Pg. No. C-603).

Meanwhile, Ministry of Defence Vide reference No. 12 above has issued circular stating that Guidelines dtd 23.12.2022 are kept in abeyance till further orders.

U.D. Dept vide letter cited at reference No. 13 above issued clarification with regards to MoD guidelines dtd 23.12.2022 and Circular dtd 23.02.2023. Content of the same are reproduced as under,

“केंद्र शासन संरक्षण मंत्रालयाने दि. २१.१०.२०१६ रोजी निर्गमित केलेल्या मार्गदर्शक तत्वांची अंमलबजावणी करण्याचे अनुषंगाने शासन नगर विकास विभागाने संदर्भ क्र. १ मधील नमूद परिपत्रक निर्गमित केले आहे. तसेच त्यानंतर बृहन्मुंबई महानगरपालिकेने केलेल्या संदर्भाचे अनुषंगाने संदर्भ क्र. २ चे पत्र महापालिकेस पाठविलेले आहे. त्यानंतर आता केंद्र शासन संरक्षण मंत्रालयाने सुधारित मार्गदर्शक तत्वे दि. २३/१२/२०२२ रोजी निर्गमित केली आहेत. तथापि, त्यानंतर संदर्भ क्र. ५ मधील नमूद केंद्र शासन संरक्षण मंत्रालयाकडील दि. २३/०२/२०२३ चे पत्राद्वारे सदरहू दि. २३/१२/२०२२ रोजीची मार्गदर्शक तत्वे पुढील आदेशांपर्यंत संस्थगित (kept in abeyance) ठेवली आहेत.

प्रमुख अभियंता (वि. नि.), बृहन्मुंबई महानगरपालिका व मुख्य कार्यकारी अधिकारी, झो. पू. प्रा. यांचे उपरोक्त संदर्भ क्र. ४ व ६ नुसार शासनास केलेल्या संदर्भाच्या अनुषंगाने उपरोक्त नमूद वस्तुस्थिती विचारात घेऊन पुढील योग्य ती कार्यवाही करणे आवश्यक आहे, असे कळविण्यात येत आहे.”

Accordingly, on receipt of aforesaid clarification this office has processed the proposal received in this office on the grounds of UDD guidelines dated 07.11.2016 and further clarification dated 19.08.2019.

Further, vide letter dated 09.09.2023 Maj, OIC Land & Legal COD Kandivali has informed this office that SRA has issued Stop Work Notice to the concerned construction firm for violating the MoD Guidelines dated 18.05.2011 and requested this office to comply with the Govt of India, Min of Defence guidelines dated 18 May 2011.

In light of the above facts and considering the UDD Guidelines dtd 07.11.2016, further clarifications dtd 19.08.2019 & 19.04.2023 and then Hon. M.C.'s Directions dtd 01.11.2021 this office was processing the proposals as per the Guidelines of UDD dtd 07.11.2016 and Mod NOC Guidelines dtd 21.10.2016.

Also, it is to mention here that, Ministry of Defence Govt of India itself while issuing Revised Guidelines on 23.12.2022 has mentioned that, "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." Wherein it is well clarified that, Ministry of Defence has issued NOC guidelines vide its letter dtd. 21.10.2016. (Copy attached at page No. C/543)

Thereafter, while delivering judgement on 27.09.2023 in WP 2724 of 2021 Hon'ble High Court has passed order (Copy as at Page No. C/1203 to C/1247),

“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)

On the basis of order of Hon'ble High Court dtd 27.09.2023 and opinion of AG, Urban Development Department had issued directives u/No. TPB-4323/UOR 40/Pr.Kr. 125/2023/UD-11 dtd 03.11.2023 (copy attached at Page No. C/1123 to C/1125) and at present this office is processing the proposals in the vicinity of COD, Kandivali and COD, Malad on the basis of same.

Presently, there are approximately 100 nos of ongoing proposals and which are at various stages and some of these proposals are now at completion stage, for which approvals were granted by this office as per then guidelines in force time to time.

Now, this office is in receipt of letter from Shri. SK Jaini, Brigadier (Station Commander) U/No. 3271/Policy/Legal dtd 09.02.2024 along with copy of Orders passed by Hon'ble Supreme Court of India in Civil Appeal No.000869 of 2024 (arising out of SLP (C) No. 28519/2023] (copy attached at Page No. C/1281 to C/1297)

Wherein Brigadier SK Jaini has mentioned that,

"4.....

5. It has been observed that in most of the cases. Municipal/ Authorities above are not cooperating and implementing the laid down orders as per Min. of Def letter referred by para 1 (b) above when 'Stop Work Notice' are issued/ NOC not granted by this Headquarter / unit Concerned to erring builders/ Developers/ Private Parties in areas around Military Installations (specially in areas of Malad, Kandivali, Santacruz & Colaba Military Station)

6. In the recent case of Writ Petition No 2724 of 2021 in respect of Dolby Builders Put Ltd.

Hon'ble High Court Mumbai had passed judgment which discontinued / nullified the sanctity of the promulgation of Min of Def letter referred at Para 1(b) above.

7. Apropos, a SLP was filed by Min of Def & Union of India before the Hon'ble Supreme Court in which Hon'ble Supreme Court is pleased to issue its judgment upholding the sanctity of the Min of Def. Gout of India letter referred at Para 1(b) above which has clearly spelled out the modalities for implementation of these orders in all such cases challenging the legality of non-issue of NOC and filing of Stop Work Notice by various unit concerned before Local Municipal / Police Authorities.

8. In view of the above, you are requested to sensitize the Collectorates/ BMC/ MCGM/ Police Authorities/ ASG or Gout pleaders involved in defending such cases challenging the Min of Def letter No 11026/2/2011/D(Land) dated 18 May 2011, 18 Mar 2015, 17 Nov 2015, to follow and uphold judgment of Hon'ble Supreme Court in this respect. However, Municipal Corporation also be intimated to withdraw its letter No. SRA/ED/OW/ 2023/44998/PN dated 20 Nov 2023 which is issued to Mr. Alamgir Ali Mohammed Malkani (Developer) & M/ ST.N. Hasan (Architect) for SR Scheme on plot bearing CTS No 9A, 9A/ 1 to 57, 123A of village Bandongri situated at Malad (E), Mumbai.

9. This is for necessary action/ implementation at your end please."

By considering the above facts, importance of the matter and interpretation of the order of Hon'ble Supreme Court; it will be appropriate to obtain legal opinion and clarification with respect to Hon'ble supreme Court's order dtd 22.01.2024 before sending reply to Brigadier Shri. SK Jaini.

In view of the above, Dy.Ch.E.(B.P.)WS-II/Ch.E.(D.P.) is requested to endorse upon suitably and forward the proposal to Law officer for detailed specific remarks from legal point of view.

Law Officer is further requested to offer detailed specific remarks for interpretation and applicability of Hon'ble Supreme Court's order dtd 22.01.2024 with regards to developments in vicinity of COD Kandivali and Malad.

Submitted please.

Dy. Ch. E. (B.P.) WS-II

Ch.E.(D.P.)

Law Officer

24/04/24
E.E.(B.P.) WS-II 'P' Ward

24-04-2024
E.E.(B.P.) WS-II 'R-1'

Pranav
AE(B.P.) 'P' Ward

AE(B.P.) 'R-1'

SE(BP)

R1

Pranav
R2

R-3

Pranav
R-4

Pranav
R-5

R-6

R-7

24/4/24
P-1

Pranav
P-2

Pranav
P-3

Pranav
P-4