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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3629/2024 & CM APPL. 14995/2024

M/S RAJASTHAN PATRIKA PRIVATE
LIMITED

..... Petitioner

Through: Mr. Ashok Gaur, Sr. Advocate with
Mr. Ajay Choudhary and Mr. Manish
K. Sharma, Advocates

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Digvijay Rai and Mr. Archit
Mishra, Advocates for R-2 & R-3
with Mr. K. K. Soni, JGM (A&S), Mr
Vivek Gupta, AGM (Law) and Ms.
Twinkle Taneja, Manager (Law), AAI
Mr. Parvinder Chauhan and Ms.
Aakriti Garg, Advocates for DUSIB

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Date of Decision: 24th May, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMOHAN, ACJ: (ORAL)**

1. Present petition has been filed under Article 226 of the Constitution of India challenging the order dated 16th October, 2023 issued by Respondent No. 4, Designated Officer of Airport Authority of India ('AAI'), whereby, the application seeking 'No Objection Certificate' ('NOC') for height clearance of the building of the Petitioner to 461 mtrs. Above Mean Sea Level ('AMSL') under Rule 5 of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 has been rejected.



2. It is stated that the Petitioner is the perpetual leaseholder of an industrial plot no. B-8 (B&C) ad-measuring 4026 sq. mtrs. located at RIICO Malviya Industrial Area, Jaipur, Rajasthan ('subject Plot') which is situated at a distance of 3.4 Kilometers from the runway-end-27 of Jaipur International Airport.

2.1. It is stated that Rajasthan State Industrial Development and Investment Corporation ('RIICO') on 13th January, 2021 duly approved the building plan for carrying out construction on the subject Plot up-to three floors as per the provisions of Model Rajasthan Urban Area Building Regulations, 2020; RIICO Building Regulations, 2021 and National Building Code, 2016. It is stated that subsequently on 18th November, 2021 RIICO granted permission to the Petitioner to construct a multistorey building with an overall height upto 30.78 mtrs. from the plinth level on certain terms and conditions.

2.2. It is stated that the Petitioner has since then constructed an institutional building on the subject Plot consisting of seven floors, as per the building plan sanctioned by RIICO. It is stated that the height level of this building is within 30.78 mtrs. as permitted in the building plan.

2.3. It is stated that the standard sea level of the subject Plot is 409.51 mtrs. AMSL, thus, the subject Plot is located on an elevated ground at the foots of Jhalana hills and due to the elevated AMSL, the building has achieved a height of 445.5 mtrs. after including mumty and overhead water tank. It is stated that the subject Plot is surrounded by Jhalana hills on two sides, with the nearest top elevation at approximately 517.39 mtrs.

2.4. It is stated on 13th September, 2023 Petitioner submitted a requisite application for height clearance of 461 mtrs. in terms of AMSL to the



Designated Officer, AAI as per the provisions of GSR 751(E) dated 30th September, 2015 issued by the Ministry of Civil Aviation. It is stated that the Application was submitted online in the No Objection Certificate Application System ('NOCAS'), maintained by the AAI.

2.5. It is stated that, however, vide order dated 16th October, 2023 the Designated Officer has rejected the application for grant of NOC, by an unreasoned order which states that "*A building with Top Elevation of 445.5 meters AMSL is already constructed at the site, thus violating the maximum permissible top Elevation*".

2.6. It is stated that aggrieved by the order dated 16th October, 2023 the Petitioner has filed an appeal before the Appellate Committee, AAI on 23rd October, 2023. It is stated that in this appeal the Petitioner has requested the Appellate Committee to consider the appeal application applying Shielding Criteria and after conducting an Aeronautical Study; to grant the NOC up to the higher height of 456.04 mtrs. in terms of AMSL. It is stated that the appeal is pending adjudication.

2.7. However, the Petitioner apprehends that the Appellate Committee, AAI will not consider the appeal on merits as the Petitioner's existing building already stands beyond the top elevation of 445.5 mtrs. and the Committee will reject the appeal without conducting an Aeronautical Study. Therefore, the Petitioner has preferred the present petition.

3. Learned senior counsel for the Petitioner states that an Aeronautical Study by the International Civil Aviation Organization (ICAO) has been recognized to be one of the procedures for determination of permissible heights for the buildings without interfering with safety aircraft operations and can be conducted for existing structures. He states that in this writ



petition, Petitioner is seeking a direction to Respondents to have the Aeronautical Study conducted at the cost of Petitioner and place the same before the Appellate Committee, AAI during the appeal. He states that the reason why the Petitioner has approached this Court is that as per Clause 6.2 of the Aerodrome Safeguarding Circular ('ADSAC') 05 of 2020¹ ('Circular') it is a prerequisite condition that the applicant must demolish the existing structure to the extent it is beyond the permissible height limit, for the appeal to be entertained.

3.1. He states that therefore, the present writ petition has been filed to direct the Appellate Committee, AAI to grant a personal hearing before deciding the appeal and to further direct Respondents to conduct an Aeronautical Study and place the same before the Committee. He states in the alternative the Petitioner also challenges the vires of Clause 6.2 of the Circular.

4. In reply, learned counsel for Respondent Nos. 2 and 3 states that he has a preliminary objection to the maintainability of this petition before this Court in view of the lack of territorial jurisdiction. He states that the building in question is located in Jaipur, the Petitioner is in Jaipur and the cause of action has entirely arisen in Jaipur.

4.1. He states without prejudice to the aforesaid submission he has instructions to submit that the Appellate Committee, AAI will grant a personal hearing to the Petitioner before deciding the appeal. He states that all the contentions raised in the petition including the plea for conducting of

¹ Annexure-P11



Aeronautical Study as well as the challenge to Clause 6.2 of the Circular can be agitated before the Appellate Committee.

5. In response, learned senior counsel for the Petitioner states that the present petition be disposed of in terms of the aforesaid statement made by the Respondent Nos. 2 and 3 reserving the right to the Petitioner herein to raise all grounds including the challenge to Clause 6.2 of the Circular before the Appellate Committee.

6. Having heard the learned counsel for the parties, we are of the considered opinion that since the Petitioner has available to it an alternative statutory remedy of appeal against the impugned order dated 16th October, 2023 and since the Petitioner has already filed an appeal under the applicable laws, the present writ petition is not liable to be entertained. The prayer of the Petitioner seeking a direction to Respondent Nos. 2 and 3 to conduct an Aeronautical Study for permitting a higher height upto 461 mtrs. in terms of AMSL and challenge to Clause 6.2 of the Circular are all pleas available to the Petitioner for agitating in the appeal.

7. We accordingly, dispose of the present petition recording the submission of the Respondent Nos. 2 and 3 that an oral hearing will be granted to the Petitioner by the Appellate Committee before deciding the appeal. Pending applications stand disposed of.

8. It is made clear that the rights and contentions of both the parties including the issue of territorial jurisdiction are kept open.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 24, 2024/hp/ms