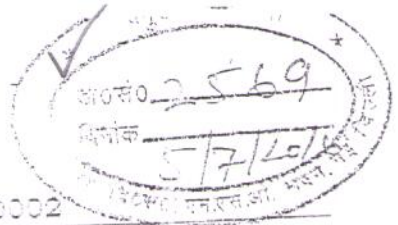


6. CE(ES/N/Edn/H)M



GOVT. OF NCT OF DELHI
DEPARTMENT OF SOCIAL WELFARE
GLNS COMPLEX, DELHI GATE, NEW DELHI-110002

P.54(196)/EO/DSW/2011-12/7546-SS

Dated: 15 JUN 2016

To
The Engineer-in-Chief,
PWD (Govt. of NCT of Delhi)
12th Floor, MSO Building,
IP Estate, New Delhi.

Handwritten signatures and initials: D.P. (M), 6/7, R. D. (M), 6/7, S. K. Tyagi, 5/7/16

Sub: Exemption of Government building from operation of municipal laws to regulate their erection.

Sir,

I am directed to enclose a copy of the circular dated 18.05.2016 issued by CPWD wherein Govt. buildings are exempted from the regulation of Municipal Building Laws. Therefore approval of local bodies for erection of Govt. building is not required. The decision of CPWD is based upon statutory provision given under Section 3 in The Government Buildings Act, 1899. CPWD has also taken opinion of M/O Law & Justice and M/O Urban Development who have confirmed the extant position for construction of Govt. building as per Section-3 of the said Act.

I am directed to request you to take-up the matter in view of aforesaid circular for early completion of government projects. Department of Urban Development as well as local bodies may also be requested to take note of this and implement the framework in r/o other government buildings.

A list of projects pending with local bodies is enclosed.

(S.K. Tyagi)
Dy. Director (Estate)

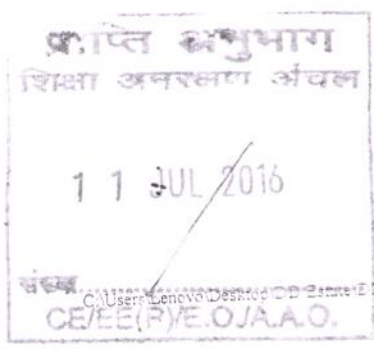
Copy to:-

- Pr. Secretary, Urban Development Department, GNCT of Delhi, 9th & 10 level, Delhi Secretariat, I.P. Estate : New Delhi-110 002
- Commissioner, SDMC, Dr. S.P.M. Civic Centre, Minto Road, New Delhi - 02
- Commissioner, NDMC, Dr. S.P.M. Civic Centre, Minto Road, New Delhi -02
- Chief Engineer (East) M,3rd Floor, MSO Building, I. P. Estate, New Delhi-02
- Chief Engineer (North) M,5th Floor, MSO Building, I.P.Estate, New Delhi-02
- Chief Engineer (South) M,7th Floor, MSO Building, I.P.Estate, New Delhi-02

Copy for information to -

- P.S to Secretary, SW, GNCTD, GLNS Complex, Delhi Gate, New Delhi-110002
- P.S to Director, DSW, GNCTD, GLNS Complex, Delhi Gate, New Delhi-110002

(S.K. TYAGI)
Dy. Director (Estate)



कार्यालय प्रमुख अधिवक्ता
लो.नि.वि., दिल्ली सरकार
1038/877/16

Handwritten signatures: Dix (works), AD (M), dy

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GOVERNMENT OF INDIA
CENTRAL PUBLIC WORKS DEPARTMENT
DIRECTORATE GENERAL
P&WA Unit

Nirman Bhawan, New Delhi.

E-Mail:- dirpwa.cpwd2008@gmail.com, cpwacpwa@gmail.com

No. 7/10/2014-W-II/DG/No.II/521

Dated 18 May 2016.

Circular No. DG/P&WA/31
Office Memorandum

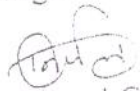
Sub: Exemption of Government building from operation of municipal laws to regulate their erection.

1. Section-3 of the Government Buildings Act, 1899, provides for exemption of Government buildings from the regulation of municipal building laws (copy enclosed). Therefore, approval of local bodies for erection of Government buildings is not required. However reasonable notice of the proposed work is required to be given to the municipal authority before its commencement.

2. Legal opinion of the Ministry of Law & Justice was sought on the issue "Whether CPWD, which is a Central Government agency for construction of Central Government buildings, is entitled not to obtain building permit as prescribed in the building bye laws of various urban local bodies before erection of central government buildings". Ministry of Law and Justice has opined that the Government Buildings Act, 1899 is still in operation in states, where it has not been specifically made inoperative and its provisions prevail in such states (copy enclosed).

3. The matter has also been examined in Ministry of Urban Development. It has been decided that CPWD officers need not take approval from the local bodies for erection of government buildings as per Section-3 of the said Act. However they shall give reasonable notice to the local bodies as per proviso to Section 3 of the Act before erection of the government buildings.

Encl: as above.


(Nirmal Goel)
Director (P&WA)

To,

1. All SDGs/ ADGs / CAs.
2. Other CPWD officers through CPWD web site.

343/c.

THE GOVERNMENT BUILDINGS ACT, 1899

ACT No. 4 OF 1899
[AS ON 1956]

An Act to provide for the exemption from the operation of municipal building laws of certain buildings and lands which are the property, or in the occupation, of the Government and situate within the limits of a municipality.

[3rd February, 1899.]

Contents

1. Short title and extent

2. Municipal authority defined

3. Exemption of certain Government buildings from municipal laws to regulate the erection, etc., of buildings within municipalities

4. Objections or suggestions as to erection, etc., of certain Government buildings within municipalities how to be made and dealt with

WHEREAS it is expedient to provide for the exemption from the operation of municipal building laws of certain buildings and lands which are the property, or in the occupation, of the Government and situate within the limits of a municipality:

It is hereby enacted as follows:—

1. Short title and extent

(1) This Act may be called the Government Buildings Act, 1899.

(2) It extends to the whole of India except Part B States (The word "and" omitted by Act 10 of 1914, s.3 and Sch. II)

[Sub-section (3) rep. *ibid.*]

2. Municipal authority defined

- In this Act the expression "municipal authority" includes a municipal corporation or a body of municipal commissioners constituted by, or under the provisions of, any law or enactment for the time being in force.

3. Exemption of certain Government buildings from municipal laws to regulate the erection, etc., of buildings within municipalities

- Nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipality shall apply to any building used or required for the public service or for any public purpose, which is the property, or in the occupation, of the Government, or which is to be erected on land which is the property, or in the occupation, of the Government:

Provided that, where the erection, re-erection, construction or material structural alteration of any such building as aforesaid (not being a building connected with the defence, or a building the plan or construction of which ought, in the opinion of [Subs. by the A.O. 1948 for "the Govt."] defence, or a building the plan or construction of which ought, in the opinion of [Subs. by the A.O. 1937 for "the Govt."] the word "Imperial" rep. by the A.O. 1948.) is contemplated, reasonable notice of the proposed work shall be given to the municipal authority before it is commenced.

4. Objections or suggestions as to erection, etc., of certain Government buildings within municipalities how to be made and dealt with

(1) In the case of any such building as is mentioned in the last preceding section (not being a building connected with [The word "Imperial" rep. by the A.O. 1948] defence or a building the plan or construction of which ought, in the opinion of [Subs. by the A.O. 1937 for "the Govt."] [the Government concerned], to be treated as confidential or secret), the municipal authority, or any person authorized by it in this behalf, may, with the permission of the State Government previously obtained, but not otherwise, and subject to any restrictions or conditions which may, by general or special order, be imposed by the State Government, inspect the land and building and all plans connected with its erection, re-erection, construction or material structural alteration, as the case may be, and may submit to the State Government a statement in writing of any objections or suggestions which such municipal authority may deem fit to make with reference to such erection, re-erection, construction or material structural alteration.

(2) Every objection or suggestion submitted as aforesaid shall be considered by the State Government, which shall, after such investigation (if any) as it shall think advisable, pass orders thereon, and the building referred to therein shall be erected, re-erected, constructed or altered, as the case may be, in accordance with such orders.

Provided that, if the State Government overrules or disregards any such objection or suggestion as aforesaid, it shall give its reasons for so doing in writing.

[Sub-section (3) rep. by the A.O. 1937.]

348/c

e. Office No. 227921/Ad
Ministry of Law & Justice
Department of Legal Affairs

Ministry of Urban Development has sought our advice whether the exemption given under section 3 of the Govt. Building Act, 1899 in respect of construction of Central Government Buildings is available even after amendment of the Constitution by the Constitution (Seventy-fourth Amendment) Act, 1992 & notwithstanding the building bye-laws framed by Urban Local bodies in exercise of the power given to them as per above referred constitutional amendment and whether CPWD, which is a Central Government Agency for construction of Central Government Building, is entitled not to obtain building permit as prescribed in building bye-laws of various Urban local bodies before erection of Central Government Buildings.

2. The matter has been examined. The Government Buildings Act, 1899 (Act of 1899) is a preconstitutional law and was enacted to provide for the exemption from the operation of municipal building laws, of certain buildings and lands which are the property, or in the occupation, of the Government and situate within the limits of a municipality. Section 3 of the Act of 1899 reads as under:

"Nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipality shall apply to any building used or required for the public service or for any public purpose, which is the property, or in the occupation, of the Government, or which is to be erected on land which is the property, or in the occupation, of the Government:

Provided that, where the erection, re-erection, construction or material structural alteration of any such building as aforesaid (not being a building connection with defence, or a building the plan or construction of which ought, in the opinion of the Government concerned), to be treated as confidential or secret) is contemplated, reasonable notice of the proposed work shall be given to the municipal authority before it is commenced".

3. Part IXA relating to Municipalities was inserted in the Constitution by the Constitution (Seventy-fourth Amendment) Act, 1992 w.e.f. 01.06.1993. Article 243W of the Constitution provides that subject to the provisions of the Constitution, the Legislature of a State may, by law, endow the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein with respect to (i) the preparation of plans for economic development and social justice; (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule. One of the functions mentioned under the Twelfth Schedule is "regulation of land use and construction of buildings".

4. Further, Article 243ZF is a non obstante clause which provides that "notwithstanding anything in this Part any provisions of any law

relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier.

5. The issue whether the Act of 1899 is still in operation or not was examined by the Division Bench of the High Court of Calcutta in WP 27784 (W) 2014, Shri Kamal Dey Vs. Director General, Archeological Survey of India and others with WP Nos. 6773(W) 2015, 7502(W) 2015 and WP 213 of 2015 (F/X) and it was held that -

"We have considered the submission of the learned Counsel of the respective parties in this regard and we find much substance in the submission of Mr. Mukherjee and Mr. Kar as we find that the Government Building Act, 1899 still remains unrepealed and the subject of its legislation relates to subject under 245(4) of the Constitution of India and the provision contained in such legislation is not contrary to Article 13(1) of the Constitution of India. We further find substance in the submission of Mr. Kar, that since the provisions contained in Government Building Act are not inconsistent with any of the provisions contained in Chapter IXA of the Constitution, the provisions contained in the Government Building Act cannot be held to be inoperative after expiration of one year from the date of commencement of constitutional seventy fourth amendment. That apart, legislative competence to legislate on state laws is subject to the central act. Besides, the exemption which was given to the state government under the Government Building Act cannot be held to be inoperative as despite knowing such exemption given to the State Government by the unrepealed central act, state government, while legislating on the Municipal laws did not make any contrary provision in the Municipal laws by making the provisions of the Government Act inoperative, as it was done by Andhra Pradesh State Legislature, even though the State Legislature was competent to do so under Article 246(3) of the Constitution.

Thus, we have no hesitation to hold that the Government Building Act is still in operation and as such we cannot properly interpret the meaning of the expression "person" mentioned in various provisions of Chapter XIII of the Kolkata Municipal Corporation Act by ignoring the provision contained in the said Act."

6. From the above, it is clear that the Act of 1899 will not be inoperative automatically rather it needs to be made inoperative by the state Governments. As such, the states where it is not made inoperative, the Act of 1899 is in force, and its provisions will prevail.

(Signature)
(R.K. Srivastava)
Deputy Legal Adviser
15.03.2016

JS&LA (Shri G.S. Yadav) *15.3.16*
DLA (RKS) *18/3*
Min. of Urban Development
15/3/16

(R.K. Srivastava)
(Dept. of Legal Adviser)
R. No. *15/3/16*
D. No. *15/3/16*
Date *15/3/16*

168
22/3/16
WR

VS (WS)

Government of India
Ministry of Urban Development
(Works Division)

346/c

250
04/5/16

Ref:- Repeal of Government Building Act, 1899.

2. It has been decided that CPWD will bring the contents of Govt. Building Act 1899 as well as legal opinion received from Ministry of Law & Justice to the notice of its officers throughout the country and direct them to use the provision of Govt. Building Act 1899 for construction of Govt. Buildings. CPWD may direct its officers that they need not take approval from the local bodies for erection of Govt. Buildings as per Section 3 of this Act. However, they shall give a notice to the local bodies as per Proviso to Section 3 of the Act before erection of the Govt. Building.

3. This issues with the approval of Secretary (UD).



(T.K. Majumdar)
Director (Works)

DG, Central Public Works Department, Nirman Bhawan, New Delhi
MoUD ID note 28012/43/2014-W-3 dated 4th May, 2016

SAC(Works) - AdG(TI)
to Director/CPWD

DIR (S&T) Dir (P&WA) 04/5/16
Please upload it at CPWD website

04/5/2016

x
ER (L&J) (1) Draft Please
(2) Please take copies of relevant notes from MOUD file as legal opinion mentioned above is in their file


ER (P&WA) for 'x' above

SO (S&T) 05/5/16