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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.117 OF 2003

1 Mr.Manjinderjeet Singh	
2 Mr.Ram Mahadeo Thorat	...Petitioners
vs.	
1 The Chief Secretary The State of Maharashtra	
2 The Divisional Commissioner, Pune Division, Pune	
3 The District Collectors, Collectorate of Pune, Pune	
4 The Director, Town Planning, Pune	
5 The Commissioner, Pune Municipal Corporation Pune	
6 The Chief City Engineer Pune Municipal Corporation, Pune	
7 State Govt. of Maharashtra Maharashtra	
8 The Commandant, Air Force, Lohegaon, Pune	
9 The Secretary, Govt. of India, Ministry of Defence, New Delhi	
10 Union of India, New Delhi	...Respondents

Mr.Salil U. Ray for the petitioners
Mr.S.N.Patil, AGP for the respondent Nos.1,2,4 and 7
Mr.Bharat Mehta for the respondent No.3
Mr.Rajesh Behere for the respondent Nos.5 and 6
Mr.Y.S.Bhate a/w Mr.N.R.Prajapati for the respondent
Nos.8 to 10

CORAM : A.S.OKA, & A.K.MENON, JJ.
DATE ON WHICH SUBMISSIONS ARE HEARD:FEBRUARY 20,2015
DATE OF PRONOUNCEMENT OF JUDGMENT : JUNE 8, 2015

JUDGMENT:

1 This Public Interest Litigation is filed for inviting attention of the Court to the alleged breaches committed of the directions issued in exercise of powers under sections 3 and 7 of the Works of Defence Act, 1903 (for short "the said Act of 1903"). The said Act of 1903 has been enacted for imposing restrictions upon the use and enjoyment of lands in the vicinity of Works of defence.

2 The petitioners are the residents of city of Pune. There is an Aerodrome/ Air Force Station established at village Lohegaon, Pune. According to the case made out in the petition, the said Air Force establishment at Pune gives coverage and protects the Oil rigs off Coast of Gujarat and Mumbai, the Bhabha Atomic Research Centre, Trombay at Mumbai, the Ammunition Factory at Kirkee, the National Defence Academy at Khadakvasala and various other important establishments in the region. The petitioners are relying upon the following notifications:

(a) Notification dated 4th July 1966 issued by the Ministry of Defence which was published in Government Gazette which according to the petitioners provides that no construction shall be made and no plantation of trees shall be made within 900 meters from the perimeter of Bomb Dump at Wagholi, Pune and Missile Installation at Viman Nagar, Pune.

(b) Notification dated 1st October 1975 published in Government of India Gazette under sections 3 of the said Act of 1903 which puts restrictions on the use of land comprised in the area lying within a distance of 1000 yards from the crest of the outer parapet of the Bomb Dump of the Air Force Station at Pune.

(c) Notification dated 5th January 1988 issued by the Ministry of Civil Aviation of the Government of India in exercise of powers conferred by Section 9-A of the Aircraft Act, 1934 (for short "the said Act of 1934"). The said notification prevents construction of any structure and plantation of any tree within the distances specified in Annexure I to this notification in relation to the civil and Military Aerodromes incorporated in annexure III to this notification, from the funnels of the runway and from the runway strip.

(d) Notification dated 22nd May 2001 issued by the Ministry of Defence in exercise of powers under sections 3 and 7 of the said Act of 1903.

(e) Notification dated 14th February 2007 issued by the Government of India in exercise of powers under sections 3 and 7 of the said Act of 1903 which is published in Government Gazette on 3rd March 2007.

3 The basic allegation made in the petition is that in violation of the aforesaid notifications, construction of multistoried buildings has been allowed to be made by the Pune Municipal Corporation and by the Authorities of the State. A prayer is made for issuing a writ of mandamus directing demolition of multistoried buildings constructed in violation of the aforesaid notifications.

4 We have heard the learned counsel for the petitioners, the learned AGP for respondent nos.1,2,4 and 7, the learned counsel for the respondent Nos.5 and 6, the learned counsel for the respondent no.3 and the learned counsel for the respondent Nos.8 to 10.

5 The learned counsel for the petitioners invited our attention to the notifications dated 1st October 1975, 5th January 1988, 22nd May 2001 and 14th February 2007. He also invited our attention to the letter dated 21st June 1998 addressed by the Air Commodore of the Air Force Station at Pune to the Commissioner of the Pune Municipal Corporation (the respondent No.5). Along with the said letter, a sketch showing the area within which construction activity should be restricted was forwarded to the respondent No.5. The learned counsel for the petitioners invited our attention to the stand taken by the State Government that the notification dated 22nd May 2001 was no more in force. He urged that the

said stand is erroneous. He urged that if the constructions made in contravention of the orders passed under section 3 of the said Act of 1903 and the notification issued in exercise of powers conferred by the said Act of 1934 are tolerated, it will endanger very important defence establishments thereby seriously compromising the security of the nation. He pointed out that considering the several terrorists attacks in the recent past, the directions in the aforesaid notifications will have to be implemented scrupulously and the development made contrary to the said notifications will have to be pulled down. He pointed out the affidavit of the year 2004 filed by Shri Dattatraya S. Pharate, the Deputy City Engineer, (Building Permissions) of the Municipal Corporation of city of Pune, in which it was contended that the notification dated 22nd May 2001 had expired. He submitted that the said stand has no basis. The learned counsel representing the respondent Nos.5 and 6 urged that the Pune Municipal Corporation has strictly followed the directions issued by the State Government. He urged that no construction in prohibited area has been permitted by the Pune Municipal Corporation. The learned counsel for the respondent Nos.8 to 10 also invited our attention to the relevant provisions of law as well as the documents placed on record.

6 We have given careful consideration to the submissions. We have perused the annexures to the petition as well as the affidavits and the annexures to the affidavits on record. It will be necessary to

consider the effect of the sections 3,7 and 9 of the said Act of 1903 which read thus:

“ 3. Declaration and notice that restrictions will be imposed.—

(1) Whenever it appears to the [1](#) [Central Government] that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders.

(2) The said declaration shall be published in the Official Gazette and shall state the district or other territorial division in which the land is situate and the place where a sketch plan of the land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in Section 7, may be inspected; and the Collector shall cause public notice of the substance of the said declaration to be given at convenient places in the locality.

(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions.

¹ *Substituted by the A. O. 1937, for “L G.”.*

“7. Restrictions.—From and after the publication of the notice mentioned in Section 3, sub-section (2), such of the following restrictions as the [1](#) [Central Government] may in its discretion declare therein shall attach with reference to such land, namely :—

(a) Within an outer boundary which, except so far as is otherwise provided in Section 39, sub-section (4), may extend to a distance of two thousand yards from the crest of the outer parapet of the work,—

(i) no variation shall be made in the ground-level, and no building, wall, bank or other construction above the ground shall be maintained, erected, added to or altered otherwise than with the written approval of the [2](#) [General Officer Commanding the District], and on such conditions as he may prescribe;

(ii) no wood, earth, stone, brick, gravel, sand or other material shall be stacked, stored or otherwise accumulated :

Provided that, with the written approval of the [3](#) [General Officer Commanding the District] and on such conditions as he may prescribe, road-ballast, manure and agricultural produce may be exempted from the prohibition:

Provided also that any person having control of the land as owner, lessee

or occupier shall be bound forthwith to remove such road-ballast, manure or agricultural produce, without compensation, on the requisition of the Commanding Officer;

(iii) no surveying operation shall be conducted otherwise than by or under the personal supervision of a public servant duly authorised in this behalf, in the case of land under the control of military authority, by the Commanding Officer and, in other cases, by the Collector with the concurrence of the Commanding Officer; and

(iv) where any building, wall, bank or other construction above the ground has been permitted under clause (i) of this sub-section to be maintained, erected, added to or altered, repairs shall not, without the written approval of the 4 [General Officer Commanding the District], be made with materials different in kind from those employed in the original building, wall, bank or other construction.

(b) Within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) shall apply with the following additional limitations, namely :—

(i) 5 [no building, wall, bank or other construction of permanent materials above the ground shall be maintained otherwise than with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, and no such building, wall, bank or other construction shall be erected :]

Provided that, with the written approval of the 6 [General Officer Commanding the District] and on such conditions as he may prescribe, huts, fences or other constructions of wood or other materials, easily destroyed or removed, may be maintained, erected, added to or altered :

Provided, also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to destroy or remove such huts, fences or other constructions, without compensation, upon an order in writing signed by the 7 [General Officer Commanding the District]; and

(ii) live hedges, rows or clumps of trees or orchards shall not be maintained, planted, added to or altered otherwise than with the written approval of the 8 [General Officer Commanding the District] and on such conditions as he may prescribe.

(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely :—

no building or other construction on the surface, and no excavation, building or other construction below the surface, shall be maintained or erected :

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, 9 [a building or other construction on the surface may be maintained and] open railings and dry brush-wood fences may be exempted from this prohibition.

1 *Substituted* by the A. O. 1937, for “L. G.”.

2 *Substituted* by Act 11 of 1921, Section 3, for “General Officer Commanding the Division”.

³ *Substituted* by Act 11 of 1921, Section 3, for “General Officer Commanding the Division, District or Brigade”.

⁴ *Substituted* by Act 11 of 1921, Section 3, for “General Officer Commanding the Division”.

⁵ *Substituted* by Act 28 of 1940, Section 2, for the original words.

⁶ *Substituted* by Act 11 of 1921, Section 3, for “General Officer Commanding the Division”.

⁷ *Substituted* by Act 11 of 1921, Section 3, for “General Officer Commanding the Division, District or Brigade”.

⁸ *Substituted* by Act 11 of 1921, Section 3, for “General Officer Commanding the Division”.

⁹ *Inserted* by Act 28 of 1940, Section 2.”

“9. Notice to persons interested.—

(1) At any time before the expiration of—

(a) the period of eighteen months from the publication of the declaration referred to in Section 3, or

(b) such other period not exceeding three years from the said publication as the ¹ [Central Government] ² [* * *] may, by notification in the Official Gazette, direct in this behalf,

the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interests in such land affected by anything done or ordered in pursuance of such declaration may be made to him :

Provided that, where anything has been done in exercise of the powers conferred, in case of emergency, by Section 6, sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter.

(2) Such notice shall state the particulars of any damage ordered to be done or, in the case referred to in Section 6, sub-section (3), done in exercise of any of the powers conferred by the said section, and the particulars of any restrictions attaching to the land under Section 7, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for damage to such interests and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business.

¹ *Substituted* by the A. O. 1937, for "L. G."

² The words "with the previous sanction of the G. G. in C.", repealed by the A. O. 1937."

7 It will be also necessary to make a reference to the notifications on which the petitioners are relying upon. The petitioners are relying upon the notification dated 4th July 1966. Even a true copy of the said notification is not placed on record and, therefore, effect of the said notification cannot be considered. The second notification on which reliance is placed is dated 1st October 1975 which is published in Government of India Gazette dated 11th October 1975. The said notification reads thus:

"S.R.O. 327 - In exercise of the powers conferred by section 3 of the Works of Defence Act, 1903, (7 of 1903), the Central Government hereby declares that it is necessary to impose the restrictions specified in clause (b) of section 7 of the said Act, upon the use and enjoyment of the land situated in the district of Poona in the State of Maharashtra described in the Schedule hereto annexed, being land in the

vicinity of the Bomb Dump at Air Force Station, Poona in order that such land may be kept free from buildings and other obstructions.

2 A sketch plan of the land may be inspected in the Office of the Collector, Poona.

THE SCHEDULE

All the land comprised in the area lying within a distance of one thousand yards from the crest of the outer parapet of the bomb Dump of Air Force Station, Poona, in the State of Maharashtra."

K.R.BALIGA, Joint Secy."

8 Thus, as per the said notification, restrictions as specified in clause (b) of section 7 were imposed upon the use and enjoyment of the land comprised in the area lying within a distance of one thousand yards from the crest of the outer parapet of the Bomb Dump of the Air Force Station, Poona (now known as Pune). In view of clause (b) of section 7 of the said Act of 1903, what was prohibited within the said distance was construction of buildings, wall or other construction by using permanent material above ground without prior approval of the General Officer Commanding the District.

9 The grievance in this PIL is that the State Government as well as the Pune Municipal Corporation did not give adequate publicity to the said notification and that the building plans were sanctioned in breach of the said notification.

10 Another notification is dated 5th January 1988 issued in exercise of powers under section 9-A of the said Act of 1934. The said notification prevents construction of buildings and plantation of trees on any land within the limits specified in Annexure-1 to the said notification in respect of the civil and military Aerodromes set out in Annexure-3. The Aerodrome at Lohegaon, Pune has been included in Annexure-3. Restrictions on construction are specified in Annexure-1. Restrictions are as regards the construction on the land enclosed in approach funnels of the runway within a maximum distance of 360 meters, measured from each runway to a long extended centre line of the runway and on the land comprising within the runway strip of uniform width of 150 meters, measured from either side of the centre line which extended beyond each extremity of the runway and the extended runway. We must note here that this grievance is made in the petition filed on 3rd October 2003. This aspect will have to be borne in mind while considering the issue of grant of relief. The relevant part of the notification dated 5th January 1988 reads thus:

"MINISTRY OF CIVIL AVIATION
New Delhi, the 5th Jan 1988

S0988 – In exercise of the powers conferred by Sec 9A of the Aircraft Act, 1934 (39 of 1934) and in suppression of the notification of the Govt of India in the erstwhile Ministry of Tourism and Civil aviation the SP MC date of the 15th March 1979. The Central Govt being of a Opinion that it be necessary an expedient so to do far safety of Aircraft operation hereby direct that:-

No building or structure shall be constructed or no tree shall be planted on any land within the limits specified in Annexure I to this notification in respect of Civil & Military Aerodromes as stated in Annexure III to this notification, aerodromes to be constructed or developed and notified by the competent authority in future where thee is any building, structure of free on such land. The owner or the person having such control of such building, structure or free shall demolish such buildings or structure or as the area may be cut such tree forthwith but not later than a period of one month from the date of publication of this notice in the official gazette.

(II) No building or structure higher than the specified in Annexure II to this notification shall be constructed or

created or no tree which is likely to grow or ordinarily grows higher than the height specified in the said Annexure II, shall be planted, on any land within a radius of twenty kilometer from the aerodrome reference point (ARP) of the aerodrome listed in Annexure III to this notification excluding the land covered by Annexure I to this notification or aerodromes which would be constructed or developed and notified by the competent authority from time to time, where the height of any building or structure or tree on such land is higher than the height specified in the said Annexure-II, the owner or the person having control of such building, structure, or tree all forthwith but not later than a period of one month from the date of publication of this notification in the Official Gazette, reduce the height thereof so as not to exceed the specified height."

11 As far as the notification dated 22nd May 2001 is concerned, the same reads thus:

"SRO. 93 — In exercise of the powers conferred by sections 3 and 7 of the Works of Defence Act, 1903 (7 of 1903), the Central Government being of the opinion that it is necessary and expedient to impose restrictions upon the use and enjoyment of land in the vicinity of the Indian Air Force

aerodromes and Installations, hereby declares that such land shall be kept free from buildings and other obstructions and directs that :-

(a) no building or structure shall be constructed, created or erected or no tree shall be planted on any land within the limits of 900 meters from the crest of the outer parapet of Indian Air Force aerodromes and Installations as given in the Annexure to this notification. The restrictions imposed by the Government of India in the Ministry of Civil Aviation under section 9A of the Aircraft Act, 1934 (22 of 1934) vide its notification number SO-988 dated 05th January 1988 shall continue to be applicable.

(b) for the purpose of this notification, the Air Officer Commanding or Commanding Officer of the concerned Indian Air Force Stations or Formations, as the case may be, shall provide all the relevant details including land holdings; to the Collector for inclusion in the public notice to be given by him under sub-section (2) of section 3 of the said Act.

2 This notification shall come into force on the date of its publication in the Official Gazette.

"Annexure" (attached)

(Dr.Parvinder Kaur)
Deputy Secretary to the Govt. of India.

(File No.Air IIQ/37528/19/W(P&C/428-F/D(Air-II)/2001

ANNEXURE

AIR FORCE AERODROMES INSTALLATIONS WHERE
RESTRICTIONS ARE BEING IMPOSED AS PER
SECTIONS 3 AND 7 OF THE WORKS OF DEFENCE
ACT,1903 (7 OF 1903)

- (a) Flying Stations. Care and Maintenance Unit and Ranges:
- (b) Missile Installations;
- (c)Radar Stations;
- (d) Communication Establishments;
- (e) Training Establishments;
- (f) Base Repair Depots;
- (g) Equipment Depots and;
- (h) Air Store Parks and Bomb Dumps"

12 The said notification dated 22nd May 2001 is issued in exercise of powers under Sections 3 and 7 of the said Act of 1903. It prevents construction of buildings and plantation of trees on any land within the limits of 900 meters from the crest of the outer parapet of Indian Air Force Aerodromes and installations as given in the annexure of the said notification. The installations include missile installations, Radar installations and Bomb Dump. To the affidavit of Shri Dattatraya S. Pharate, the Deputy City Engineer (Building Permissions) of Pune Municipal Corporation, a letter dated 19th September 2003 addressed by the Ministry of Defence of

Government of India to the Principal Secretary of the Urban Development Department of Government of Maharashtra has been annexed. In the said letter, it is stated that the notification dated 22nd May 2001 has expired and as of that date, no such restriction has been imposed. On the basis of the said letter, the Principal Secretary of the Urban Development Department of the State Government, by a letter dated 22nd September 2003 communicated to the Commissioner of the Pune Municipal Corporation that the notification dated 22nd May 2001 is no more operative. Similar stand has been taken in the affidavit of Smt. Sadhana Pradeep Naik, the Assistant Director of Town Planning, Pune Branch, Pune.

13 It will be necessary to consider the stand taken in the the affidavit of Air Commodore Pradeep Singh who was the Air Officer Commanding of the Air Force Station at Lohegaon, Pune. In paragraph 3 of the said affidavit, he has accepted the case made out by the petitioners that the Air Force Station at Lohegaon, Pune protects the various establishments as set out by the petitioners in the petition. A grievance has been made in the said affidavit that though instructions were issued to the District Collector, Pune, to issue a public notice as per the provisions of the said Act of 1903, he has not taken any action. As regards the notification dated 22nd May 2001, in paragraph 5 of the said Affidavit, he has stated thus:

"5...I further say and submit that due to increase in the population in this area, has created open threat to this respondent and even the Hon'ble High Court of Bombay has already upheld the validity of Government notification in the case of Writ Petition No.4765 of 2000 (ASP Kapoor Vs. Union of India). GOI MOD has directed to all District Magistrate / District Collector / Dy. Commissioner vide their letter No.4(9)/02/D (Air-II) dated 20 January 2004 that the gazette notification issued vide SRO 93 dated 22 May 2001 for imposing restrictions on construction upto 900 meters around Air Force Installations has been expired. The issue of imposing some restriction on construction activities around Air Force Installations and airfields has been deliberated in the Ministry and a modified proposal is under active consideration..."

14 Thus, a specific stand has been taken on oath that by a letter dated 20th January 2004, the Government of India, Ministry of Defence communicated that the notification dated 22nd May 2001 has expired.

15 On this aspect, it will be necessary to make a reference to the affidavit of Shri Prakash Nivrutti Bongale, the Assistant Director of Town Planning, Pune Branch, Pune. A copy of the letter dated 25th May 2007 issued by Shri M. John, Air-Vice Marshal,

Senior Officer in charge Administration, for Air Force Commanding-in-Chief addressed to the Chief Secretary of Government of Maharashtra has been annexed. It is stated in the said letter that the Notification dated 22nd May 2001 expired in November 2002 as no notification could be issued by the District Collectors for imposition of restrictions.

16 A copy of the Gazette Notification dated 14th February 2007 was forwarded along with the said letter. The relevant part of the Gazette Notification dated 14th February 2007 reads thus:

"S.R.O.12 – In exercise of the powers conferred by Sections 3 and 7 of the Works of Defence Act, 1903 (7 of 1903), the Central Government, being of the opinion that it is necessary and expedient to impose restrictions, upon the use and enjoyment of land in the vicinity of the Indian Air Force Stations and Installations, hereby declares that such land shall be kept free from buildings and other obstructions and directs that:-

(a) no building or structure shall be constructed, created or erected or no tree shall be planted on any land within the limits of 100 meters from the crest of the outer parapet of Indian Air Force Stations and Installations as given in the Annexure 'A' to this notification.

(b) no building or structure shall be constructed, created or erected or no tree shall be planted on any land within the limits of 900 meters from the crest of the outer parapet of Indian Air Force Stations and Installations as given in the Annexure `B' to this Notification.

(c)no building or structure shall be constructed, created or erected or no tree shall be planted on any land within the limits of 100 meters from the crest of the outer parapet except that the limit of 100 meters will extend to 900 meters from and in line with the boundary of the bomb dump at Indian Air Force Stations and Installations as given in the Annexure `C' to this notification.

(d) The restrictions imposed by the Government of India in the Ministry of Civil Aviation under Section 9A of the Aircraft Act,1934 (22 of 1934), vide its notification number S.O.988, dated the 5th January 1988 shall continue to be applicable to the Indian Air Force Aerodromes.

(e)For the purpose of this notification, the Air Officer Commanding or Commanding Officer of the concerned Indian Air Force Stations or Installations, as the case may be, shall provide all the relevant details including land holdings to the Collector for inclusion in the public

notice to be given by him under sub-section (2) of Section 3 of the Works Defence Act, 1903 (7 of 1903).

2 This notification shall come into force on the date of its publication in the Official Gazette."

What is stated in the Gazette Notification dated 14th February 2007 was communicated by the State Government to the Municipal Commissioners of Mumbai, Pune and Thane Municipal Corporations as well as the Collector of Pune.

17 Thus, the stand of the Air Force is that the notification dated 22nd May 2001 expired in November 2002. The reason being that the notification contemplated by Section 9(1) of the said Act of 1903 was not issued within the stipulated period of 18 months and the time for the publication of such notification was not extended by the Central Government. There is no reason to reject the stand taken on oath that the notification dated 22nd May 2001 expired in November 2012. Thus, when the present PIL was filed, only the notifications dated 1st October 1975 and 5th January 1988 were in force. During the pendency of the petition, the notification dated 14th February 2007 was issued which continues to operate till today.

18 As far as the stand of the Pune Municipal Corporation on the implementation of the notifications is concerned, it will be necessary to

consider the affidavit of Shri Dattatrya S. Pharate, the Deputy City Engineer of the Pune Municipal Corporation. Relevant portion of paragraph II and entire paragraph III of the said Affidavit read thus:

"II...I say that prior to issuing these guidelines on 21.6.1998 and even after issuance of these guidelines, the PMC have not granted a single building permission in violation of clauses 2 to 7. I put the petitioners to the strict proof as to whether the PMC has granted any building permission in violation of clauses 2 to 7.

III Without prejudice to the above, I say that the petitioners are placing reliance upon the draft notification dated 22.5.2001 issued by the Ministry of Defence. I say that however, subsequently the Under Secretary to the Government of India, Ministry of Defence, addressed a letter dated 19.9.2003 to the Principal Secretary, Urban Development Department, Government of Maharashtra, setting out therein that the said notification dated 22.5.2001 has expired and hence as on date there is no such restriction on construction activities around IAF installations/units on account of this notification. Annexed hereto and marked Exhibit-2 is a copy of the said letter. The Principal Secretary, Urban Development

Department of the Government of Maharashtra, in turn, addressed a letter dated 22.9.2003 to the Municipal Commissioner of the PMC, informing that so long as the revised notification is not published as per the development rules, there is no objection for granting building permission within 900 meters. Annexed hereto and marked Exhibit-3 is a copy of the said letter."

19 Reliance is placed in the aforesaid affidavit on the guidelines issued on 21st June 1998. The guidelines are of clearance surfaces and restrictions. There is a categorical statement in clause II of the affidavit that after the issuance of the guidelines, no permission has been granted by the Pune Municipal Corporation in violation of clauses 2 to 7 of the guidelines dated 21st June 1998. Further, a stand taken is that as per the advice of the State Government, the Municipal Corporation proceeded on the footing that the notification dated 22nd May 2001 did not exist.

20 Thus, from the above discussion, it is very clear that even when the present petition was filed, the notification dated 22nd May 2001 was not in operation. Therefore, in exercise of discretionary writ jurisdiction, the grievance regarding the breach of the directions in the notification dated 22nd May 2001 cannot be entertained.

21 We have already quoted the directions issued by

the notifications dated 1st October 1975, 5th January 1988 and 14th February 2007. It is obvious that no construction could have been carried out in contravention thereof. Therefore, constructions made from the date of filing of this petition which are in breach of the directions contained in the notifications dated 1st October 1975 and 5th January 1988 as well as the constructions made in breach of the directions in the notification dated 14th February 2007 will have to be pulled down. The breaches of the notifications issued under the said Act of 1903 pose a danger to the national security. The breach of the notification issued under the said Act of 1934 in relation to the Aerodrome at Pune amounts to causing danger to the security of the members of public. Such illegalities which compromise with the security of the defence installations cannot be tolerated. Therefore, all the Concerned Authorities are under a legal obligation to remove offending structures/constructions.

22 The exercise of identifying the constructions made in breach of the aforesaid notifications will have to be undertaken by the respondent Nos.5 and 6 by soliciting co-operation from Air Commodore, Air Officer Commanding of the Air Force Station at Lohegaon, Pune. After ascertaining particulars of the structures erected in contravention of the aforesaid three notifications, the action of demolition will have to be initiated by the Pune Municipal Corporation after complying with the

principles of natural justice.

23 We accordingly pass the following order:

(i) The constructions/structures made from the date of filing of this petition (3rd October 2003) which are in breach of the directions contained in the notifications dated 1st October 1975 and 5th January 1988 as well as the constructions/structures made in breach of the directions contained in the notification dated 14th February 2007 shall be pulled down by the Pune Municipal Corporation;

(ii) The exercise of identifying the constructions made in breach of the aforesaid notifications which are liable to be pulled down shall be made by the respondent Nos. 5 and 6 with the assistance of an officer or officers nominated by the In-charge Officer/ Commanding Officer of the Air Force Station at Lohegaon, Pune;

(iii) The In-charge Officer/ Commanding Officer of the Air Force Station at Lohegaon, Pune shall accordingly nominate an officer or officers within a period of one month from today;

(iv) The exercise of identifying the offending structures shall be completed within a period of six months from today;

(v) The Pune Municipal Corporation shall complete the action of the removal of the

offending structures within a period of one year from today. The action of removal shall not be taken without giving an opportunity of being heard to all affected persons. The hearing shall be confined to the issue whether the structures have been made in breach of the directions contained in the aforesaid three notifications. The action of demolition shall be taken fifteen days after the service of a speaking order on the affected persons;

(vi) The Pune Municipal Corporation shall ensure that no constructions are hereafter made in breach of the aforesaid notifications;

(vii) The Rule is made partly absolute in above terms with no order as to costs;

(viii) The Petitioners shall serve an authenticated copy of this Judgment on all concerned who shall act upon the same.

(A.K.MENON,J.)

(A.S.OKA,J.)