

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.193 OF 2009

WITH

CIVIL APPLICATION NO.19 OF 2015

WITH

CIVIL APPLICATION NO.111 OF 2016

Shri Nagraj Pukharajji Sheth.] ... Petitioner

Versus

The Union of India & Ors.] ... Respondents

None for Petitioner.

Mr. B. B. Sharma a/w Mr. A. R. Verma & Mr. D. P. Singh for Union of India.

Mr. P. P. Kakade, AGP for State.

Mr. Irfan Shaikh i/b Mr. S. B. Shetye for Applicant in Civil Application No.111 of 2016.

**CORAM :- DR. MANJULA CHELLUR, C.J., &
G. S. KULKARNI, J.**

DATE :- 19 APRIL 2017

P. C. :-

1. The petitioner had enthusiasm to bring this PIL as *pro bono publico* in the year 2009. From records, we see he has lost interest for quite some time and he is not at all appearing before the Court. Even in the year 2013, he did not appear and thereafter he never appeared before the Court. According to the petitioner, after publication of an order in the official Gazette dated 16/05/1992 as

required under Section 3 of the Indian Works of Defence Act, 1903, (for short, '1903 Act') no further action whatsoever is taken by the respondent department. Therefore, he approached this Court in the present PIL seeking following prayers :-

- “A. *This Hon'ble Court be pleased to issue a Writ of mandamus and / or any other writ, direction or order in the nature of mandamus thereby directing the Respondent Nos.1 to 3 herein to forthwith start the process of land acquisition for creating the buffer zone near the area of land held by the Naval Armament Depot at Karanja and the INS Tunir forthwith;*
- B. *This Hon'ble Court be pleased to direct the Respondent Nos.2 to 4 to take every preventive measure so that no construction of any kind of work whatsoever is allowed to appear in any of the lands within the buffer zone of the Naval Armament Depot at Karanja and the INS Tunir.*
- C. *The Hon'ble Court be pleased to direct the Respondent Nos.2 to 4 to remove any construction from any of the lands within the buffer zone of the Naval Armament Depot at Karanja and the INS Tunir.*
- D. *Pending the hearing and final disposal of this Petition, the Respondent Nos.2 to 4 be directed not to allow any construction of whatsoever nature on any of the lands held by the Naval Armament Depot at Karanja and the INS Tunir.*
- E. *Ad-interim reliefs and interim relief in terms of prayer clauses (c), (d) and (e) above be, kindly, granted.*
- F. *Such other and further reliefs as this Hon'ble Court may deem fit and proper be, kindly, granted.”*

2. In terms of the enactment, whenever it appears to the local Government that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or 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 has to be made to that effect under the signature of a Secretary to such Government or a duly authorized

officer. It further says the declaration has to be published in the local official Gazette and once such declaration is made, it shall become conclusive proof that it is necessary to keep the land free from buildings and other obstructions. This is what is contemplated under Section 3 of the 1903 Act. After a notification in the official Gazette as stated above in the year 1992, nothing seems to have been done in the complaints of the petitioner. He also brought on record that encroachments by illegal constructions or otherwise are made in the area where the local government requires imposition of restrictions. From time to time, the matter is coming up. In the year 1992, Gazette notification is made. After such Gazette notification, what the local government has to do is clearly indicated in Section 4 onwards. Under Section 12, after the date for hearing as indicated under Section 9, inquiry has to be conducted and an award has to be passed by the Collector. Section 31, under Part V, of the 1903 Act clearly says after making of an award under Section 12, how payment of compensation has to be made. It also indicates methodology how the payment must be made if payment is not received by the authorities concerned.

3. After initiating this PIL, apparently, the petitioner did not pursue the matter.

4. After the Gazette notification in the year 1992, though some attempt is made by the department concerned representing Union of India asking the said government department to remove

illegal encroachments and constructions, definitely there seems to be no serious course of action taken. Once Section 3 is made applicable, if really for the need of safety and security, restrictions have to be imposed, the department concerned must take the proceedings to its logical conclusion rather than allowing general public to approach the Court. Since the petitioner is not pursuing the matter further, we are of the opinion he is not really interested in the philosophy underlining Section 3 for various other reasons he approached this Court. It is possible that he may be under the impression that the Union of India, Department of Navy must require this declaration to be concluded by taking it to logical conclusion.

5. Till today, Union of India has not sought any specific directions from this Court. If they are really concerned about the notification of 1992 or any other safety concerns in the interest of nation, they are always at liberty to seek State machinery to assist them to take the proceedings to its logical conclusion. The entire mechanism is such under the Act itself and they are empowered to act in accordance with the provisions of the above-said Act. In that view of the matter, we are of the opinion there is no need for keeping this PIL pending. By keeping the issues, open, the proceedings are closed.

6. In view of disposal of PIL Civil Applications do not survive and the same are also disposed of.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)