

2. The review is sought of the Judgment and Order dated 8th June, 2005 passed by this Bench in the PIL No.117 of 2013 filed by

the 1st and 2nd respondents. The operative part of the said judgment and Order in paragraph 23 reads thus :

“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 Incharge Officer/ Commanding Officer of the Air Force Station at Lohegaon, Pune;

(iii) The Incharge 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."

3. The petitioners are claiming to be in possession of the structures which are more particularly described in paragraph 2 of the review petition. In terms of the clause (v) of paragraph 23 of the aforesaid Judgment, the petitioners were served with the notices

issued by the Pune Municipal Commissioner (7th respondent) calling upon them to show cause as to why the structures in their possession should not be demolished, as the structures are falling within prohibited areas as per the notifications dated 1st October 1975, 5th January 1988 and 14th February 2007. The petitioners claim that they became aware of the judgment of this Court after they were served with the notices.

4. The first contention raised in support of the review petition is that the structures of the petitioners are not falling within the prohibited area under the notifications dated 1st October 1975 and 5th January, 1988. The second contention is about non compliance with the requirements of Sub-Section 2 of Section 3 of the Works of Defence Act, 1903 (for short "the said Act of 1903"). The contention is that the Collector did not cause public notice of the substance of the said notification/declaration dated 14th February 2007 containing the properties of the petitioners published at the convenient places in the locality where the said properties claimed by the petitioners are situated. The submission is that unless there is a compliance with Sub-Section 2 of Section 3, the restrictions incorporated in terms of the notification dated 14th February, 2007 which was issued in exercise of the powers under Sub-Section 1 of Section 3 of the said Act of 1903 will not operate. The submission is that the restrictions mentioned in the notification in Sub-Section 1 of Section 3 come into operation only after the publication of the

declaration as mentioned in Sub-Section 2 of Section 3 in the manner provided therein as is clear from express language used by Section 7 of the said Act of 1903. The submission is that as far as the properties on which the structures of the petitioners are situated, the restrictions imposed by the notification dated 14th February, 2007 will not operate on account of non compliance of Sub-Section 2 of Section 3. Moreover, the contention raised is that very fact that the another notification dated 13th January, 2010 was issued under Sub-Section (1) of Section 3 shows that even the Defence Authorities proceeded on the footing that the notification dated 14th February, 2007 is not in operation. Further contention of the petitioners is that there is an error apparent on the face of record as this Court has protected structures which were made prior to 3rd October, 2003 when the notification dated 14th February, 2003 was in operation.

5. As far as the last submission is concerned, the judgment of this Court is very clear. The structures which offended the notifications dated 1st October, 1975 and 5th January, 1988 and which were constructed prior to 3rd October, 2003 were protected for the reason that the PIL was filed on 3rd October, 2003. In fact, this Court had made it clear that all the construction/structures made in breach of the notification dated 14th February, 2007 shall be pulled down by the Pune Municipal Corporation. Therefore, there is no merit in the said ground.

6. The notices were issued by the 7th respondent - Pune Municipal Corporation to the petitioners alleging that the structures of the petitioners were in the prohibited zone of all the three notifications. After considering the reply filed by the concerned petitioners, the Pune Municipal Corporation has passed the orders dated 30th April, 2016 holding that the structures of the petitioners are situated in the prohibited zone under the notifications.

7. The very object of directing the Pune Municipal Corporation to give an opportunity of being heard before actually pulling the structures was to ensure that there is a verification made as to whether the structures are constructed in the prohibited area. This issue has been gone into by the Pune Municipal Corporation. Therefore, the remedy of the petitioners is to challenge the orders passed by the Pune Municipal Corporation on the show cause notices.

8. Now we come to the arguments based on the notification dated 14th February, 2007. Subsequent notification issued in the year 2010 will not decide whether the said notification of 14th February, 2007 became operative in terms of the said Act of 1903.

9. The requirement of Sub-Section 2 of Section 3 is two fold. The first requirement is that the declaration issued under Sub-

Section (1) of Section 3 shall be published in the Official Gazette which must mention the place where a sketch plan of the land will be available for inspection. The second requirement is that the Collector shall cause public notice of the substance of the said declaration to be given at the convenient places in the locality. The contention of the petitioners is that there was non compliance with the second part. The contention is that the public notice of substance of the said declaration was not given at the convenient places in the locality where the structures of the petitioners are situated. The correctness of this factual contention is denied by the State Government as well as by the Union of India. It is true that in view of Section 7, only from the date of publication in accordance with Sub-Section 2 of Section 3 that the restrictions mentioned in the notification issued under Sub-Section 1 of Section 3 come into operation. As the specific contention of the review petitioners is that there is non compliance with the requirement of giving a public notice of the substance of the declaration at convenient places in the locality, it will be appropriate if the issue of compliance is decided by the Collector as the record regarding publication, if any, will be available in the office of the Collector.

10. Though this is not a case where there is an error apparent on the face of record or even otherwise, there is a ground for review, considering the factual aspects raised by the petitioners and considering the fact that the petitioners' residential

structures will be demolished in implementation of the Judgment and Order in the PIL, we propose to direct the Collector to give an opportunity of being heard to the petitioners as well as the Union of India through its Defence Department. As stated earlier, the issue regarding the location of the structures in the prohibited area is already decided by the Pune Municipal Corporation. Accordingly, we dispose of the review petition by passing the following order :

- (i) We direct the petitioners or their representative as well as the representative of the 10th to 12th respondents to remain present in the Office of the District Collector, Pune on 19th May, 2017 at 11 am for fixing the date of hearing. On that day the date for hearing shall be fixed;
- (ii) After giving an opportunity of being heard to the petitioners as well as to the 10th to 12th respondents, the Collector shall decide the issue whether the publication of the substance of the declaration dated 14th February, 2017 as contemplated by Sub-Section 2 of Section 3 of the said Act of 1903 was made in relation to the properties of the petitioners described in paragraph 2 of the review petition;
- (iii) The appropriate order shall be passed by the Collector as expeditiously as possible and in any event within a period of three months from 19th May, 2017;
- (iv) If the Collector holds that the compliance with requirement of Sub-Section 2 of Section 3 of the said Act of 1903 was made, subject

to the proceedings which may be filed by the review petitioners for challenging the order passed by the Pune Municipal Corporation on 30th April, 2016, the action of demolition shall be taken against the structures in terms of the Judgment and Order sought to be reviewed;

(v) In the event the Collector holds that the compliance with Sub-Section 2 of Section 3 of the said Act of 1903 has been made in respect of the lands on which the structures of the petitioners are situated, we direct that the action of demolition shall not be taken for a period of eight weeks from the date on which the order passed by the Collector is communicated to the petitioners;

(vi) Needless to add that if the Collector comes to the conclusion that compliance with the requirement of Sub-Section (2) of Section 3 of the said Act of 1903 is not made in respect of the lands/structures of the petitioners described in paragraph 2 of Review Petition, the order of demolition shall not be implemented only on the basis of the notification/declaration dated 14th February, 2007;

(vii) The review petition is, accordingly, disposed of.

(viii) The District Collector and all the parties to act on an authenticated copy of this order.

(A.K. MENON, J.)

(A.S. OKA, J.)