

mandatory requirement of issuance of public notice under Section 3(2) of the Works of Defence Act, 1903 was not complied with.

Few facts giving rise to the petition are stated thus:-

A public interest litigation bearing No. 117 of 2003 was filed in respect of the illegal construction around Lohegaon airport in violation of the notification under the Aircraft Act, 1934 and the Works of Defence Act, 1903. During the pendency of the public interest litigation, a notification under the Works of Defence Act, 1903 was issued on 14th February 2007 imposing restrictions on the construction on the land around the airport station, Lohegaon, Pune. The public interest litigation was favourably considered, in the larger interest and certain directions pertaining to the identification of illegal construction and demolition of the same were issued. The Court directed the Pune Municipal Corporation to identify the offending structures within a time frame and demolish the same. Further directions were issued against the corporation to ensure that no construction was thereafter made in breach of the notification under the provisions of the Aircraft Act, 1934 and the Works of Defence Act, 1903. Since the petitioners were not parties to the public interest litigation and were not heard before the public interest litigation was decided, they had filed a review petition bearing (L) No. 4279 of 2016 seeking a modification of the said order. In the review petition, it was argued

on behalf of the petitioners that there was non-compliance of the provisions of Sub-section 2 of Section 3 of the Works of Defence Act, 1903 and hence, the building structure constructed by the petitioners should not be demolished. The review petition was partly allowed. The Court granted an opportunity to the petitioners to point out before the Collector - the appropriate authority, that there was non-compliance of the provisions of Sub-section 2 of Section 3 of the Works of Defence Act, 1903 inasmuch as the Collector had not caused the public notice of the substance of the declaration at convenient places in the locality. By directing the Collector to grant an opportunity of hearing to the petitioners, the review petition was disposed of and it was directed that in the event the Collector holds that there was compliance of Sub-section 2 of Section 3 of the Works of Defence Act, 1903 while issuing the notification for demolition of the structures shall not be undertaken for eight weeks. After the review petition was disposed of, the Collector granted hearing to the petitioners and by the impugned order dated 18th August 2017 overruled the objection of the petitioners that the notice was not published in accordance with Section 3(2) of the Works of Defence Act, 1903. Being aggrieved by the said order, the petitioners' have filed the instant petition.

Mr. Gadkari, the learned counsel for the petitioners submitted by referring to the provisions of Sections 3 and 9 of the Works of

Defence Act, 1903 that the Collector was not justified in holding that the notice of the substance of the declaration was given at convenient places in the locality. It is submitted that though Sub-section 2 of Section 3 of the Act requires that the public notice should be given at "convenient places in the locality", Section 9 of the same further explains that the public notice should be given at convenient places on or near the land". It is stated that on a reading of the provisions of Section 9 of the Act, it is clear that it was necessary for the Collector to cause a public notice to be given at convenient places on or near the land, which was not done. It is submitted that by publishing or affixing the notice at the Talathi office, it cannot be said that the notice was caused to be given at convenient places. It is submitted that Wing Commander Mr. S. Sachdeva had written to the District Collector on 22nd May 2008 that the notice was faulty, inasmuch as the mentioning of the survey numbers of the restricted area had created confusion in the minds of the public. It is submitted that the Collector has not considered the provisions of the Works of Defence Act, 1903, specially Section 9 thereof before passing the impugned order. It is submitted that the sketch plan of the land was also not prepared on a scale, as required by the provisions of Sub-section 2 of Section 3 of the Act.

The learned counsel for the respondent Nos. 5 to 7 has supported the order of the

Collector. It is submitted by referring to the judgment of the Hon'ble Supreme Court in the case of ***State of Gujarat Vs. Panch Of Mani Hamam's Pole & Ors***¹ that causing the publishing of notice at convenient places in the said locality would not mean that the notice should be actually served on the persons concerned or should be affixed on their residence. It is submitted that on an appreciation of the material tendered by some of the respondents-authorities before the Collector, the Collector has rightly come to the conclusion that the public notice was caused in accordance with the provisions of Section 3(2) of the Act. It is submitted that the public notice was not only displayed in the Talathi office, but was also displayed at Tahasildar Haveli on the notice board by the village level Officer. It is submitted that several representations were made by the affected parties after the notice were so published. It is submitted that merely because the petitioners were not actually aware of the public notice, they cannot be heard to say that the public notice was not caused in accordance with the provisions of Section 3(2) of the Act.

It appears that in a petition filed in public interest, this Court had after considering the various notifications under the concerned Acts held that any breach of the notification issued under the Works of Defence Act, 1903 would cause danger to the national security. Since this Court was clearly of the view that the breach of the

¹ ***AIR 1986 SC 803***

notification issued under the Works of Defence Act, 1903 and the Aircraft Act, 1934 would cause danger to the security of the public, it was held that the illegality pertaining to the illegal construction could not be comprised with the security of the defence. Certain directions were therefore, issued against the Pune Municipal Corporation to identify the structures and demolish the same. Since the petitioners were aggrieved by the said judgment, the petitioners filed review petition (L) No. 4279 of 2016. On a reading of the order in the said review petition, it appears that the petitioners had raised a challenge to the notification on the ground of non-compliance of Sub-section 2 of Section 3 of the Works of Defence Act, 1903, inasmuch as the public notice was not given at the convenient places in the locality. Partly accepting the submission made on behalf of the petitioner, this Court directed the Collector to decide the issue whether the publication of the substance of the declaration, dated 14th February 2007 was made in accordance with the provisions of Section 3(2) of the Act. It is apparent from the reading of the judgment in the public interest litigation in the entirety that this Court had directed the Collector to consider whether the public notice of the substance of the declaration was given at convenient places in the locality. The petitioners were duly heard by the Collector. On a reading of the impugned order, it appears that the Collector has taken into consideration, the material available on record to hold that the public notice

of the substance of the declaration was caused in convenient places in the locality. It appears from the impugned order of the Collector that several communications on record could depict that directions were issued by concerned authorities to effect the public notice as required by Section 3(2) of the Act and the communications in reply showed that the public notice was effected on 9th April 2008. It appears from the order of the District Collector that the public notice in regard to the declaration was published on the notice board on 9th May 2008 in the Tahasildar Haveli. It was published in the office on a notice board by a village level officer. A report about the notice was also published in the newspaper Prabhat on 14th May 2008 clearly mentioning therein the survey numbers which would be affected by the notice. On an appreciation of the material on record, the Collector has held that the public notice was caused accordance with Section 3(2) of the Works of Defence Act, 1903. All the relevant communications are considered by the Collector to record the aforesaid findings. It would not be proper for this Court to interfere with the said order in exercise of the writ jurisdiction, specially when it appears from the documents that are considered by the Collector that the public notice, as required by Section 3(2) of the Act was effected.

We find on a reading of the judgment of the Hon'ble Supreme Court in case of **State of Gujarat** (supra) that every person need not be

served with the notice or the notice need not be affixed on the residence or the plot of every individual. The substance of the declaration is required to be given at the convenient places in the locality. The substance of the declaration was duly displayed in the Tahasildar Haveli, Talathi Office and a report of the same was also published in daily newspaper Prabhat.

We are not inclined, in the aforesaid set of facts, to interfere with the findings recorded by the Collector in the impugned order. We also do not uphold the submission made on behalf of the petitioners that the public notice of the declaration under Section 3 (2) should be given in the manner provided under Section 9 of the Act. The stage and the object with which the public notices are required to be given under Section 3 of the Act and Section 9 of the Act are different, so also, the manner in which the notice is required to be given under the aforesaid two provisions also differs from each other. Section 3 speaks of the public notice of the declaration to be given at convenient places in the locality and Section 9 refers to the damages or compensation that are payable. Considering the object with which the notices are issued, under Sections 3 and 9, it cannot be said that the manner in which the notice is required to be given under Section 9 would apply to the public notice required to be effected under Section 3.

Like a notice under Section 4 of the Land Acquisition Act, 1894 is required to be given at

convenient places in the locality, the notice of the declaration under Section 3(2) of the Works of Defence Act, 1903 is required to be given at convenient places in the locality. Publishing the notice in the Tahasildar and Talathi office at conspicuous places could be sufficient compliance of the provision. The provisions of Section 9 of the Works of Defence Act, 1903 are akin to the provisions of Section 9(1) of the Land Acquisition Act, 1894, where "public notice is required to be given at convenient places on or near the land to be taken". That is the stage under the Land Acquisition Act, 1894 where persons interested are required to state the nature of their interest in the land and the amount and the particulars of their claim to compensation. Similarly, in the Works of Defence Act, 1903 a notice under Section 9 would be a notice to the "persons interested" that are affected by the declaration under Section 3 of the Act. Considering the purpose and object of Sections 3 and 9 of the Works of Defence Act, 1903, the legislature in its wisdom has provided for the issuance of public notice in a different manner. When one provision of an Act requires the notice to be issued in a particular manner and the other provision of the same Act provides for causing the public notice in a different manner, it is apparent that the legislature had consciously decided to so provide differently, considering the purpose and object of the two provisions. The petitioners therefore cannot claim, by taking recourse to the provisions of Section 9 of the Works of Defence Act, 1903 that

the public notice of the substance of the declaration under Section 3 of the Works of Defence Act, 1903 ought to have been given at the "convenient places on or near the land" and not at the "convenient places in the locality".

We are not inclined to consider the submission made on behalf of the petitioners that the sketch plan of the land was not prepared on the scale, as is required under Section 3(2) of the Works of Defence Act, 1903. This was not a ground argued on behalf of the petitioners in the review petition. The matter was remanded to the Collector to only decide the issue whether the public notice of the declaration was "given at convenient places in the locality". The Collector had therefore, no occasion to deal with the submission pertaining to the preparation of the map on a scale. Furthermore, the said submission was not made before the Collector and rightly so as the petitioners were aware about the scope of the hearing before the Collector.

The last submission made on behalf of the petitioners for challenging the impugned order that the public notice was technically improper as it does not clearly record the survey numbers is also liable to be rejected. The said submission is recorded, only to be rejected. Firstly, this ground was not raised before this Court in the review application. Secondly, in the communication of the Wing Commander dated 22nd May 2008, it is only mentioned that the public notice has created confusion in the mind of the public in regard to

the survey numbers. Creating confusion in the minds of the public is one thing to say and that the issuance of the public notice was not in consonance with the provisions of Section 3(2) of the Works of Defence Act, 1903 is another thing to say. Since the scope of the matter before the Collector pertained only to the causing of the substance of the declaration at convenient places in the locality and since we do not find any error in the order of the Collector, recording a finding that the public notice was effected in accordance with the provisions of Section 3(2) of the Works of Defence Act, 1903, the petition is liable to be dismissed.

Hence, we dismiss the writ petition, with no order as to costs.

With the dismissal of the writ petition, the Civil Application stands disposed of.

At this stage, the learned counsel for the petitioners seeks a stay of the judgment for a period of eight weeks.

In the circumstances of the case, we stay the judgment for a period of six weeks.

Order accordingly.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A NAIK, J.]