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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13216 OF 2016

**1. Mr. Anilkumar Baburao Surapaneni &
Anr.**

Age 43 Yrs, Occu. Business, Residing at 10m
Rajiv Nagar South, Viman Nagar, Pune – 14.

...Petitioners

Versus

1. The Government of India and Ors.

Thru Secretary, Ministry of Defence, Dept of
Defence, New Delhi

...Respondents

Mr. Girish S. Godbole with Mr. Drupad Sopan Patil for the
Petitioners.

Mr. Anil Singh, Additional Solicitor General and Mr. Y.S. Bhate i/b.
Nirmeshkant R. Prajapati for Respondent Nos. 1, 3 to 5.

Mr. V.S. Gokhale, 'B' Panel Counsel for State / Respondent Nos. 2
and 6.

Mr. Atul Damle i/b. Deepak Ravindra More, for Respondent No.7.

Mr. Rajdeep Suresh Khadapkar, for Respondent No.8.

Mr. P.K. Dhakephalkar with Mr. A.S. Davar and Ms. Rutuja Patil,
i/b. Negandhi Shah & Himayatullah for Respondent No.9.

**CORAM: A.A. SAYED &
 R.I. CHAGLA, JJ.**

JUDGMENT RESERVED ON 22TH MARCH, 2019

JUDGMENT PRONOUNCED ON 3RD MAY, 2019.

J U D G M E N T :- (Per R.I. Chagla J.)

1. This Petition filed under Article 226 of the Constitution of
India impugns a No Objection Certificate (for short 'NOC') dated
12th January, 2016 issued by Respondent No.1 permitting the

Respondent Nos. 7 and 9 to construct buildings on land bearing survey No.203/2A (Part), village Lohegaon, Pune (for short "the said land"). The Petitioners have also sought a direction against Respondent Nos. 7 and 8 to withdraw the Development Rights Certificates issued in favour of Respondent No.9 Developer in lieu of construction on the said land.

A brief background of facts is necessary.

2. The Respondent No.9, owner of the said land on 29th March, 2007 submitted a proposal to Respondent No.7, the Slum Rehabilitation Authority (for short 'SRA') for development of a portion of the said land under the Development Control Regulations of Pune Municipal Corporation read with Draft Special Regulations of SRA for Pune and Pimpri Chinchwad Area. The SRA issued Letter of Intent on 30th March, 2007 for implementation of SRA scheme on the portion of the said land (14,450 Sq. mtrs.) on terms and conditions set out thereunder. On 30th May, 2007, in terms of the LOI, Conveyance in respect of the said portion of land on which the SRA scheme was proposed to be implemented was conveyed to SRA. A notification was issued by SRA under Section 3 C of the Slum Act. Pursuant thereto on 14th

October, 2009, SRA issued Commencement Certificate in terms of the LOI upto 11 Floors for 8 buildings with Height of 34.95 Meters and 8 floors for 1 building with Height of 26.25 Meters. Since the said land was situated near the Air Force Station, Lohegaon, Pune, the Air Force Station intimated to SRA that NOC is required for construction of high rise buildings.

3. The Air Force Station, Lohegaon was included in Annexure C of the Notification dated 14th February, 2007 which Notification has been issued by Ministry of Defence in exercise of powers conferred by Sections 3 and 7 of the Works of Defence Act, 1903. The Central Government by the said Notification of 2007 had considered it necessary and expedient to impose restrictions upon the use and enjoyment of land in the vicinity of the Indian Air Force Stations and installations. It is provided in Clause (C) of the said Notification of 2007 that “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”. By a subsequent Notification

dated 14th January, 2010 issued under Section 9A of the Aircraft Act, 1934 by Ministry of Civil Aviation, it was notified that the Central Government being of the opinion that it was necessary for the safety of aircraft operations to direct that no building or structure shall be constructed or erected within the limits specified in Annexure I and II on any land within a radius of 20 kms from the Aerodrome Reference Point of Civil and Military Aerodrome, without obtaining NOC. Clause 2 of the said Notification provided that for the purpose of issuing NOC referred to in clause I for Defence aerodromes, Defence Authorities shall be responsible for issuing NOC in accordance with this Notification and subject to any other restriction or conditions which such Authorities deem fit for issuing the NOC.

4. Pursuant to the Notifications of 2007 and 2010, the Air Force Station, Lohegaon, Pune by communication dated 3rd December, 2010 intimated to SRA that NOC is required for construction of high rise buildings on the said land. Accordingly, the SRA applied for NOC on 18th December, 2010. The Air Force Station had called for certain information in relation to the SRA scheme being implemented by Respondent No.9 and this was complied with by the SRA and final application for NOC was

submitted on 15th February, 2011. On 9th March, 2011, the Air Force Station recommended the proposal for issuance of NOC to the Command Head Quarters, Gandhinagar, State of Gujarat, (South Western Air Command). The Command H.Q. in turn recommended the proposal for issuance of NOC to the Air HQ – New Delhi. A report was issued by the concerned Air Force Station on 15th April, 2011 to the Command H.Q., wherein it was specifically mentioned that the building is beyond 100 mtrs. and the site of construction is adjacent to domestic area. It appears that on 18th May, 2011, the Respondent No.1, Ministry of Defence had issued Guidelines for issue of NOC for building constructions which provided that restriction of building constructions shall not apply where construction activities are regulated by the provisions of Cantonments Act, 2006, Aircraft Act, 1934, Gazette Notification SO 84E dated 14th January, 2010 as revised from time to time, Works of Defence Act, 1903 and in such cases the provisions of the concerned Act or Notification shall continue to prevail. The Guidelines prohibited constructions which were within 100 mtrs. from the radius of defence establishment and multi-storey buildings of more than four storeys within a distance of 500 Sq. mtrs. from the radius of defence establishment. The Guidelines did not apply to the said lands belonging to the Respondent No.9

which were beyond 100 Mtrs. from the defence establishment / Air Force Station apart from the construction activities being regulated by the Works of Defence Act or Aircraft Act.

5. Initially, the Air Force Station, Lohegaon, Pune issued a letter dated 31st October, 2011 to the Pune Municipal Corporation informing them that the construction activities of Respondent No.9 was cleared as far as operational aspects were concerned. However, it was stated therein that based on the said Guidelines dated 18th May 2011, the project is within 100 mtrs. from the crest of the outer parapet wall of domestic area and the proposed building is having more than 4 floors and that the construction cannot be recommended. Pursuant thereto, the SRA issued stop work notice dated 30th November, 2011 to Respondent No.9. A letter dated 13th December, 2011 was addressed by Respondent No.9 to the SRA to lift the stop work notice for 4 out of 6 buildings which were clearly beyond 100 Mtrs. from the crest of the out parapet wall of the Air Force Station. Thereafter, on 12th June, 2012, the SRA withdrew stop work notice issued to Respondent No.9 by directing Respondent No.9 to restrict the five buildings upto 4 floors and to handover the ready four buildings to SRA. The Air Force Station by its further communication informed the

Municipal Commissioner to stop work immediately till receipt of NOC from the Ministry of Defence. Accordingly, the SRA issued stop work letter on 18th September, 2012 to Respondent No.9 and called upon Respondent No.9 to obtain necessary NOC from the Ministry of Defence. Respondent No.9 accordingly addressed a letter dated 6th November, 2012 to the Joint Secretary (Air), Ministry of Defence requesting for issuance of NOC and informed the Authority that the site in question is beyond 100 mtrs. from the Air Force Station, Lohegaon and the said Guidelines do not apply as the construction activities of Respondent No.9 are regulated by the Works of Defence Act and the Aircraft Act and Notifications issued thereunder. A survey was conducted by the Air Force Station, Pune in respect of the construction activities of Respondent No.9 on the said lands on 26th November, 2012. The survey was carried out by Air Force Station and the report was submitted on 18th December, 2012 to the Command SWAC and Air H.Q., New Delhi intimating that all structures constructed by Respondent No.9 under the SRA Scheme fall beyond the prohibited area and permission was not recommended purely on the Guidelines dated 18th May, 2011. Respondent No.9 issued further communications to the Ministry of Defence requesting for issuance of NOC on the ground that the said Guidelines issued by

the Ministry of Defence are not applicable to the construction activities of Respondent No.9. The SRA had also by communication dated 31st October, 2013 informed the Secretary of the Ministry of Defence to issue the NOC at the earliest as the project is being commenced and constructed within the norms. The Secretary, Ministry of Defence by its communication dated 16th April, 2014 informed Respondent No.9 that further action would be taken after comments / recommendations of the State Government on request for NOC is received.

6. On 27th February, 2015 the Principal Secretary – UD, State Government referred to the communication of Respondent No.9 and informed the Joint Secretary (AIR) that the Works of Defence Act is applicable to the said lands and that the Guidelines dated 18th May, 2011 are not applicable to the construction activities of Respondent No.9. The NOC had accordingly been requested to be issued. The Respondent No.9 pursuant to this communication from the State Government pursued its request for issuance of NOC with the Air HQ – New Delhi by its communication dated 7th August, 2015. The Air Force Station, Pune informed the Pune Municipal Commissioner by its communication dated 6th October, 2015 that the said Guidelines dated 18th May, 2011 is ceased

forthwith and not applicable to Pune. On 26th October, 2015, the Respondent No.9 requested the Ministry of Defence to issue appropriate directions for issuance of NOC to the construction activities of Respondent No.9 / SRA project as the same was beyond the prohibited area and the Guidelines dated 18th May, 2011 are not applicable to the Air Force Station, Lohegaon, Pune.

7. The Ministry of Defence on 12th January, 2016 issued the impugned NOC to SRA on the terms and conditions set out therein. Whilst issuing the NOC, the Ministry of Defence referred to letter dated 7th August, 2015 addressed by Respondent No.9 to the Air H.Q. for issuance of NOC. On 3rd February, 2016, the stop work notice was withdrawn by the SRA and construction activities by Respondent No.9 on the said land were commenced. A joint survey was conducted by the Air Force Station, Lohegaon, Pune and SRA on 7th October, 2016 wherein it was observed that, the site in question is beyond 100 Metres from the Defence Wall (Domestic Area). This Petition impugns the NOC issued by the Ministry of Defence.

8. This Court by order dated 25th April, 2017 admitted this Petition and granted interim relief in terms of prayer clause (d) of the Petition and accordingly, the impugned NOC was stayed.

9. Mr. Girish Godbole, learned Counsel for the Petitioner has submitted that, the impugned NOC issued by the Ministry of Defence is in complete violation of its Notification of 2007 which had prohibited construction activity of lands situated within the distance of 100 Mtrs. from the crest of the outer parapet wall of the Air Force Station. He has submitted that the construction activities of Respondent No.9 is within the prohibited distance of 100 Mtrs. and hence the impugned NOC could never have been issued. He has relied upon a communication dated 13th December, 2011 addressed by Respondent No.9 to SRA wherein it is stated that 2 out of 6 proposed buildings would be affected if the 100 Mtrs. criteria is considered. He has submitted that the Ministry of Defence had no jurisdiction or authority to issue the impugned NOC and / or relax the said condition in the Notification of 2007. He has further submitted that the Notification of 2007 makes applicable the prior Notification SO 988 dated 5th January, 1988. Under that Notification construction activity within 20 kms from the Aerodrome Reference Point has been restricted by the

Government of India, Ministry of Civil Aviation exercising power under Section 9A of the Aircraft Act. He has submitted that the proposed construction activity by Respondent No.9 is in the restricted area of the 1988 Notification and hence the impugned NOC in any event could not have been issued. He has submitted that the impugned NOC has been granted by the Ministry of Defence by placing reliance upon the Notification issued on 30th September, 2015 by the Ministry of Civil Aviation by which the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 (for short "the Rules of 2015") were published and which provided for grant of NOC. However, the application of Respondent No.9 for NOC being prior thereto i.e. of 7th August, 2015 could not have been examined under the Rules of 2015 as stated to have been done in the impugned NOC. He has submitted that the Ministry of Defence had no power under the Aircraft Act to issue the NOC granting permission for construction activity on land which is within the radius not exceeding 20 kms from the Aerodrome Reference Point as provided in the Notification of 2010.

10. He has submitted that powers conferred by the Works of Defence Act and the Aircraft Act will have an overriding effect and

that a development permission / NOC for construction activity contrary to the said Acts and Notifications issued thereunder are bad in law. He has submitted that under the provisions of Works of Defence Act and the Aircraft Act, there is no provision for grant of NOC. He has placed reliance upon the Guidelines dated 18th May, 2011 issued by the Ministry of Defence which prohibited multi storey building of more than four storeys within the distance of 500 Mtrs. which has been considered to be a security hazard. He has relied upon the communication from the Air Force Station as well as other higher authorities which have stated that the subject buildings which are in excess of 4 storeys are likely to create a security hazard. He has submitted that these Guidelines issued by the Ministry of Defence have not been withdrawn till date. He has relied upon the communication from Air Force Station dated 10th September, 2015 to the Air HQ for review of the proposal for grant of NOC at the level of AIR HQ and HQ Southern Western Command (SWAC). The HQ SWAC in turn addressed letter dated 29th September, 2015 requesting Directorate of Air Traffic Services to review the proposal for height restriction. He has submitted that it is to the knowledge of the Petitioners that the Directorate of Air Traffic Services has not cleared the proposal. He has also relied upon the communication dated 3rd November,

2015 of the Air Force Station to the SRA for submission of a fresh survey of India report as the survey of India report submitted had not taken into consideration all relevant pillars of the proposed site along with the relevant authenticated map. He has submitted that it is to the knowledge of the Petitioners that the Respondents have not submitted the fresh survey of India report till date. He has further relied upon the communication addressed by the Ministry of Defence dated 30th December, 2015 addressed to ACAS (Works) requesting AIR HQ to advise Respondent No.9 to apply afresh for issuance of NOC. He has submitted that despite Respondent No.9 not applying afresh for issuance of NOC, the impugned NOC was issued on 12th January, 2006. He has submitted that under Section 7 of the Works of Defence Act or Section 9A of the Aircraft Act there was no authority to grant NOC and that the NOC suffers from inherent lack of jurisdiction. He has, therefore, submitted that the impugned NOC be quashed and set aside. He has further submitted that Respondent Nos.7 and 8 could not have issued Development Right Certificate in favour of the Respondent No.9 in lieu of construction on the said land without a legal and valid permission / NOC being granted by the Ministry of Defence.

11. Mr. Dhakephalkar, the learned Senior Counsel for Respondent No.9 has placed reliance on the correspondence addressed by the Respondent No.9 and the SRA with the Ministry of Defence for issuance of NOC for construction activity of Respondent 9 on the said land. He has submitted that the SRA applied for NOC as far back on 15th February, 2011 and that the Air Force Station, Lohegaon, Pune had recommended the proposal for issuance of the NOC. He has submitted that from the Report dated 15th April, 2011 of the Air Force Station, Pune, it was clear that the buildings on the said land were beyond 100 Meters and the site of construction is adjacent to the domestic area. He has relied upon the notice of the Collector dated 9th April, 2008 which was issued pursuant to the Notification dated 14th February, 2007 and included the various locations and lands which would be affected by the Notification dated 14th February, 2007 as these lands were within the limits of 100 mtrs from the crest of outer parapet wall of the Air Force Station. He has submitted that the said land which the subject matter of this Petition was not mentioned in the notice of the Collector as the said land was not within the limits of 100 meters from the crest of outer parapet wall of the Air Force Station and hence construction activity was not prohibited. It is necessary to mention here that Mr.

Godbole, learned counsel for the Petitioner has relied upon certain correspondence from the Director (Air - I) as well as by the ACAS (Works) to submit that the provisions of the Notification dated 14th February, 2007 had erroneously been made inapplicable and unenforceable for domestic areas and submitted that it was due to this omission that the said land had not been included in the Notice of the Collector.

12. Mr. Dhakephalkar has further submitted that the reason for the non grant of NOC for several years was because of the Guidelines issued by the Ministry of Defence being made applicable to the construction activity of Respondent No.9 on the said land. It was due to the applicability of these Guidelines that SRA had issued the stop work notice. He has submitted that it was only later upon a view being taken by the Principal Secretary – UD, State Government which was informed to the Joint Secretary, AIR, that the Works of Defence Act, is applicable to the said lands and the Guidelines dated 18th May, 2011 issued by the Ministry of Defence are not applicable, that the Ministry of Defence upon being satisfied, issued the impugned NOC. He has submitted that three surveys of the construction activities on the said land have been conducted, two by the Air Force Station, Lohegaon, Pune

and one by a private agency employed by Respondent No.9. He has relied upon the said surveys which are annexed to the reply filed in the Petition and which clearly show that the structures to be constructed by Respondent No.9 under the SRA scheme are beyond the restricted zone of 100 Mtrs. He has also relied upon the Notifications issued on 14th January, 2010 and 30th September, 2015 in support of his contention that the buildings to be constructed by Respondent No.9 are within the permissible height i.e. less than 45 Mtrs. and thus permissible. He has submitted that a joint survey has also been conducted later by the Air Force Station, Lohegaon, Pune and the SRA on 7th October, 2016, wherein it was observed that the site in question is beyond 100 Mtrs from the Defence Wall (Domestic Area). He has submitted that as against these surveys carried out, the Petitioner has not carried out any survey to dispute this factual position. He has submitted that the impugned NOC has been validly granted under the Aircraft Act and pursuant to the said Notification of 2010 as well as the said Notification of 2015. He has submitted that the Ministry of Defence upon being satisfied that the construction activity of Respondent No.9 on the said land was not prohibited by the said Notifications issued under the Works of Defence Act and the Aircraft Act has granted permission for construction activity to

be carried out on the said lands. He has submitted that the application for NOC of Respondent No.9 / SRA was much prior to 7th August, 2015 and that the communication dated 7th August, 2015 was only a reminder of the application for NOC on the part of Respondent No.9 and hence it cannot be said that the application for grant of NOC is only by way of this communication. He has submitted that it was not necessary for Respondent No.9 / SRA to make a fresh application for grant of NOC as the Ministry of Defence was considering the prior application made in 2011 for grant of NOC. The impugned NOC dated 12th January, 2016 is pursuant to this application. He has accordingly submitted that the impugned NOC has been legally and validly issued by the Ministry of Defence by exercising its power under the Aircraft Act and the Notifications issued thereunder and hence the Petition does not have any merit and should be accordingly dismissed.

13. Mr. Anil Singh, the learned Additional Solicitor General appearing for the Respondent Nos. 1, 3 to 5 has submitted that the Ministry of Defence has power under Section 9A read with sub section 1 and clause (o) and clause (r) of Sub section (2) of Section (5) of the Aircraft Act to grant NOC for construction activity in respect of buildings to be constructed on land not exceeding 20

Kms from the aerodrome reference point. This clearance by the Ministry of Defence for construction and erection of building / structure upto a certain height specified within the radius of 20 Kms from the aerodrome reference point is by way of publication of Notification. He has relied upon the Rules of 2015 which were issued by way of Notification (GSR – 751 (E)) dated 30th September, 2015 which provides for grant of such NOC. He has submitted that even under the notification dated 14th January, 2010 there was a provision for NOC to be granted for construction within the radius of 20 Kms. of the Aerodrome Reference Point. He has submitted that the Respondent No.1 Ministry of Defence has validly exercised its powers under the said provisions by issuance of the impugned NOC granting permission for construction activity of Respondent No.9 on the said land. He has submitted that the surveys conducted by the Air Force Station, Lohegaon, Pune had found the buildings to be constructed by the Respondent No.9 on the said lands to be beyond 100 Mtrs as the nearest pillar was found to be at distance of 100.32 Mtrs from the crest of the outer parapet wall of the Air Force Station. He has also submitted that the Air Force Station, Lohegaon, Pune informed the Pune Municipal Commissioner that the Guidelines dated 18th May, 2011 are not applicable to Pune. The Principal

Secretary – UD – State Government has also opined that the Works of Defence Act is applicable to the said land and construction activity of Respondent No.9 thereon and hence the said Guidelines were inapplicable. He has accordingly submitted that it was incumbent upon the SRA and Respondent No.9 to apply for NOC under the Notification that existed at the time of making the applications in 2011 i.e. SO 84(E) which was by way of Notification dated 14th January, 2010. He has accordingly submitted that the Writ Petition is liable to be dismissed with exemplary cost.

14. Mr. Atul Damle, the learned Senior Counsel for Respondent No.7, SRA has supported the arguments of Respondent No.9 and placed reliance upon the joint survey report of SRA and Air Force Station, Lohegaon, Pune on 7th October, 2016 wherein it was observed that the subject site in question was beyond 100 Mtrs. from the crest of outer parapet wall of the Air Force Station. He has submitted that the impugned NOC has been legally and validly issued pursuant to the SRA application dated 15th February, 2011. He has also submitted that the NOC had not been granted by virtue of Guidelines of Ministry of Defence initially being made applicable to the construction activity of Respondent

No.9 and upon the Ministry of Defence being subsequently satisfied of the inapplicability of the Guidelines to the construction activity of Respondent No.9 on the said land as the construction activity was regulated by the Works of Defence and Aircraft Act, the impugned NOC was issued. He has accordingly submitted there is no merit in the Petition and the Petition deserves to be dismissed.

15. We have considered the rival submissions. The Petitioners who have filed this Petition are residents of Rajiv Nagar South, Viman Nagar, Pune – 110 014 and Petitioner No.2 is stated to be a retired Warrant Officer, Indian Air Force. The Petitioners have sought protection of their fundamental rights under the Constitution of India. The main challenge in the Petition is to the impugned NOC dated 12th January, 2016 issued by the Ministry of Defence, Government of India (Respondent No.1 herein). The Petitioners contention is that the impugned NOC has been issued by the Ministry of Defence without jurisdiction and thus having no statutory force of law. We shall first deal with the jurisdiction of the Ministry of Defence to issue the impugned NOC granting permission to the construction activities of Respondent No.9 on the said land.

16. The power of Central Government to prohibit or regulate construction of buildings, planting of trees, etc. within the radius not exceeding 20 Kms from the aerodrome reference point has been provided for under Section 9A of the Aircraft Act, which reads as under:-

9-A. Power of Central Government to prohibit or regulate construction of buildings, planting of trees, etc. – (1) If the Central Government is of opinion that it is necessary or expedient so to do for the safety of aircraft operations it may, by notification in the Official Gazette, –

(i) direct that no building or structure shall be constructed or erected, or no tree shall be planted on any land within such radius, not exceeding twenty kilometres from the aerodrome reference point, as may be specified in the notification and where there is any building, structure or tree on such land, also direct the owner or the person having control of such building, structure or tree to demolish such building or structure or, as the case may be, to cut such tree within such period as may be specified in the notification;

(ii) direct that no building or structure higher than such height as may be specified in the notification shall be constructed or erected, or no tree, which is likely to grow or ordinarily grows higher than such height as may be specified in the notification, shall be planted, on any land within such radius, be specified in the notification and where the height of any building or structure or tree on such land is higher than the specified height, also direct the owner or the person having control of such building, structure or tree to reduce the height thereof so as not to exceed the specified height,

within such period as may be specified in the notification.

(2) In specifying the radius under clause (i) or clause (ii) of sub-section (1) and in specifying the height of any building, structure or tree under the said clause (ii), the Central Government shall have regard to –

(a) the nature of the aircraft operated or intended to be operated in the aerodrome; and

(b) the international standards and recommended practices governing the operations of aircraft.

17. Further, the relevant provisions of the Works of Contract Act are Section 3 and 7 which read thus:-

3. Declaration and notice that restrictions will be imposed. – (1) Whenever it appears to the 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.

7. Restrictions. From and after the publication of the notice mentioned in section 3, sub- section (2), such of the following restrictions as the 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 General Officer Commanding the District, and on such conditions as he may prescribe;

.....

18. The relevant provisions in both these Acts provide for restrictions to be imposed by the Central Government in respect of lands which are within the vicinity of the Air Force Station / aerodrome and / or the Works of Defence. Hence, there is a power conferred on the Central Government by these Acts to impose such restrictions on construction activity which are within

the restricted area for safety of the said Air Force Station and / or the Works of Defence. It is under these provisions that the above referred Notifications of 2007, 2010 and 2015 were issued by the Ministry of Defence.

19. The impugned NOC is having statutory force and this is evident from the relevant provisions of the Aircraft Act as well as the Notification (GSR 751E) issued on 30th September, 2015 notifying the Rules of 2015 and the prior Notification of 2010 under which Application for NOC was made. The relevant provision of the Aircraft Act apart from Section 9A extracted above are Section 5(1) and (2) which reads as under:

5. Power of Central Government to make rules.-- (1) Subject to the provisions of section 14 the Central Government may, by notification in the Official Gazette, make rules regulating the manufacture, possession, use, operation, sale, import or export of any aircraft or class of aircraft and for securing the safety of aircraft operation.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for –

(o) the manner and conditions of the issue or renewal of any license or certificate under the Act or the rules, the examination and tests to be undergone in connection therewith, the form, custody, production, endorsement, cancellation,

suspension or surrender of such license or certificate, or of any log-book.

(r) any matter subsidiary or incidental to the matters referred to in this sub-section.

It is seen from the above provisions that the Central Government has the power to issue Rules for securing the safety of Aircraft operation.

20. The Rules of 2015 issued vide notification dated 30th September, 2015 (GSR -751 – E) expressly provide in Rule 5 (1) and (2) as under:-

5. Issuance of No Objection Certificate. – (1) The No Objection Certificate in respect of civil aerodromes shall be issued by the designated officer on behalf of the Central Government in respect of civil aerodromes.

(2) The No Objection Certificate in respect of defence aerodromes shall be issued by the authorised officer in accordance with Schedule I and Schedule II, subject to such other conditions as the said authorised officer may deem fit.

The definition of NOC under said Rules is provided in Rule 3(viii), which reads as follows:-

3(viii) “No objection Certificate” means the certificate issued under rule 5;

The Rules of 2015 further provide that the Airports Authorities of India is responsible for processing or issuance of NOC being the designated authority.

21. In the notification (SO 84 E) issued on 14th January, 2010, the Ministry of Civil Aviation exercised the powers conferred by Section 9A of the Aircraft Act after receipt of all information considered necessary and expedient for the Safety and Aircraft Operations and issued directions. Clause 1 and 2 of the said Notification read thus:-

1. No building or structure shall be constructed or erected and no tree shall be planted on any land within the limits specified in Annexure I and II from Civil and Defence Aerodromes and Aeronautical communication stations listed in Annexure- IIIA, IIIB, IIIC, IIID and IIIE without obtaining "No Objection Certificate".

2. For the purpose of issuing of No Objection Certificate referred to in paragraph 1,

(a) the Airports Authority of India shall be responsible for issuing the No Objection Certificate on behalf of Central Government in respect of all civil aerodromes in India including the State Government aerodromes and the Private aerodromes where civil commercial flights are operating as listed at Annexure IIIA;

(b) for Defence aerodromes, defence authorities shall be responsible for issuing No Objection Certificate in accordance with this notification and subject to any other restriction or condition which such authorities deemed fit for issuing the 'No Objection Certificate'.

22. Thus the notification dated 14th January, 2010 had directed that the Defence Authorities to be responsible for issuing NOC for building or structure to be constructed or erected within the limits specified in Annexure I and II from Defence aerodrome and aeronautical communications listed in the Annexures mentioned therein. The concerned Defence aerodrome in this Petition has been listed in Annexure III – C of the Notification.

23. Upon considering the facts in the present case, we are of the view that the power to issue NOC has been validly exercised by the Ministry of Defence under Section 9A of the Aircraft Act, read with the relevant Notification issued on 14th January, 2010. We find that the final application for grant of NOC was pursuant to this Notification and is dated 15th February, 2011. We find that the Air Force Station, Lohegaon, Pune as well as Command Head Quarter, Gujarat, State of Gujarat, (South West Air Command) both had recommended the issuance of NOC for the construction activity of Respondent No.9. It is only by virtue of placing reliance

on its Guidelines dated 18th May, 2011, the Ministry of Defence had not adhered to the recommendation as the proposed constructions / buildings were having more than four floors and were within 500 Mtrs from the parapet wall of the Air Force Station, hence in violation of these Guidelines. The SRA accordingly had issued stop work notice to Respondent No.9. Various communications had been addressed by the Respondent No.9 and the SRA to the effect that the Guidelines issued on 18th May, 2011 were not applicable to the construction activities of Respondent No.9 as the Guidelines itself provided that they would not apply to construction activities which were regulated by the Works of Defence Act and the Notification of 2010 issued under the Aircraft Act. The Ministry of Defence upon being satisfied with these communications as well as, the opinion of the Principal Secretary, UD, State Government to the effect that the guidelines are inapplicable to the construction activities of Respondent No.9 and pursuant to direction issued by the Air Force Station, Lohegaon, Pune to the Pune Municipal Commissioner that the said Guidelines were inapplicable to Lohegaon, Pune, issued the impugned NOC.

24. Further, it appears that there were surveys of the proposed construction on the said land, which were conducted by the Air Force Station, Lohegaon, and a private agency employed by Respondent No.9. Thereafter there was a joint survey by the Air Force Station, Lohegaon, Pune and SRA conducted after issuance of the impugned NOC. All these surveys were unanimous in observing that the construction activities of Respondent No.9 on the said land are beyond 100 Mtrs from the crest of the parapet wall of the Air Force Station and thus not prohibited by the Notification of 2007. As against this, the Petitioners have not conducted any survey of the construction activities of Respondent No.9 and thus it is clear that the Petitioners have no basis for stating that the construction activities of Respondent No.9 on the said land were situated within 100 Mtrs. from the crest of the parapet wall of Air Force Station. The Petitioners have merely relied on a correspondence of Respondent No.9 to the effect that 2 out of the 6 proposed buildings may be affected by the 100 Mtrs criteria. The correspondence was addressed to SRA to lift the stop work notice in respect of 4 buildings which met the said criteria. Further, the correspondence was addressed prior to the said surveys being conducted and hence cannot form the basis of this allegation. We

also do not find any merit in the contention of the Petitioners that the height restrictions will be violated by the Respondent No.9 in constructing the buildings on the said land. It is an admitted fact that the proposed buildings have a height of 40.45 meters and thus are within the permissible height of 45 Mtrs. as provided for in both Notifications of 14th October, 2010 and 30th September, 2015. It is thus apparent that the Petitioners have made allegations against the construction activity of Respondent No.9 on the said land without any supporting material or survey conducted backing these allegations. It is also apparent from the notice of the Collector issued on 9th April, 2008 which notified the lands which were within 100 Mtrs from the crest of the parapet wall of the Air Force Station and thus prohibited under the Notification of 2007, the land had been excluded. We do not find that the exclusion of domestic area in this notice which was later found to be incorrect makes any difference as the construction activities of Respondent No.9 on the said land is beyond 100 Mtrs. from the crest of the outer parapet wall of the Air Force Station as borne out from the surveys conducted. We further do not accept the submission of the learned Counsel for the Petitioners that the construction activities of Respondent No.9 were in violation of the height restrictions under the 1988 Notification as this Notification

has been superseded by the 2010 and 2015 Notifications which provide for a permissible height of 45 Mtrs. for the buildings constructed in the restricted areas. In any event there is no pleading of this contention by the Petitioners in the Petition and this is a mere after thought brought for the first time in the Affidavit in Rejoinder.

25. We are of the considered view that the impugned NOC issued by the Ministry of Defence is legal and valid and has statutory force of law and that the challenge to the NOC is without any merit. We accordingly dismiss this Petition. There shall be no order as to costs.

(R. I. CHAGLA J.)

(A.A. SAYED, J.)

26. Upon pronouncement of the judgment learned Counsel for the Petitioner prays that the stay granted by the interim order dated 25th April, 2017 be extended by a period of 12 weeks. The prayer is opposed by the learned Counsel for the Respondents. In the facts and circumstances of the case, we are not inclined to grant the prayer for extension of the stay. The prayer shall stand rejected.

(R. I. CHAGLA J.)

(A.A. SAYED, J.)