

IN THE HIGH COURT AT CALCUTTA

Circuit Bench at Jalpaiguri

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 1158 of 2021

with

CAN 1 of 2021

Dhiraj Ghosh

Vs.

Union of India & Ors.

For the Petitioner

: Mr. Jagriti Mishra,
Ms. Ananya Bhattacharya,
Mr. Subham Gupta,
Mr. Reshab Kumar,
Mr. Raj Kumar Mitra,
Ms. Mrinmayee Das.

For the Union of India

: Mr. Sudipto Kumar Mazumder, Ld. DSGI
Mr. Ajoy Kumar Singhania,
Mr. Sourav Kar.

Hearing concluded on

: 10.10.2023

Judgment on

: 18.10.2023

Shampa Dutt (Paul), J.:

1. The present writ petition has been filed praying for quashing of the written complaint dated 24.04.2021 lodged by the Respondent No. 5 in pursuant to notification S.R.O. 4 dated 13.01.2010 issued by Respondent No. 3 (under instructions from the Respondent No. 1 and 2) and a formal FIR registered subsequent thereto, being no. 158 of 2021 under Section 188 of the Indian Penal Code.
2. It is the case of the petitioner that he is the husband and the duly constituted attorney of the recorded owner with acquired right, title and interest over the piece or parcel of the land measuring 3 Acres, appertaining to R.S. Dag No. 230, L.R. Dag No. 179, Khatiyani No. 1143, J.L. No. 099, situated at Mouza- Dakshin Bagdogra, Block Naxalbari, Thana Naxalbari, District- Darjeeling. The Petitioner alongwith his wife has been looking into all the affairs of the said land and has been possessing and enjoying the land freely, and openly and adversely without any interruption, intervention and disturbance from anybody whomsoever and free from all encumbrances, lien and charges whatsoever.
3. That a contingent of Central Industrial Security Force (CISF), Ministry of Home Affairs (MHA), an armed force of the Union is presently providing security to the Civil Enclave of the Bagdogra Airport.

4. That, at present Bachelor Component of CISF personnel posted at Bagdogra airport, are residing at three different locations. All barracks are scattered and there is no permanent barrack available for CISF personnel. Day to day logistic problems are faced by every personnel of the unit.
5. It is stated by the petitioner that hence, barrack at one place is the utmost requirement of CISF which can solve the dire need of CISF to guard the Airport.
6. The petitioner is ready to build the CISF Barracks as per the requirements of the CISF personnel on his land, which was found to be suitable for barrack by the CISF Authorities as it is present in the vicinity of the Airport, which would be further be taken on lease by the Airport Authority of India, Bagdogra. The Respondent No. 8 wrote a letter requesting the Respondent No. 4 to grant permission for the above stated purpose.
7. The petitioner started the construction work on his land as time was the essence.
8. That while constructing the said barrack, one of the representatives of the Air Force Authorities visited the site of the Petitioner and asked to stop the construction work that very minute and report to the Air Force Station with necessary documents.
9. The Respondent No. 5 then vide memo No. 20WS/200/1/2P4 dated 24th April 2021 lodged a formal written complaint with the Respondent No. 11

asking him to register an FIR against the duly constituted attorney/petitioner Dhiraj Ghosh alleging the illegal and unauthorized construction on the Petitioner's land.

- 10.** The written complaint by the Respondent No. 5 was registered as an FIR vide FIR No. 158 of 2021 corresponding to General Diary Reference Entry No. 1824, on the self same date under Section 188 of the Indian Penal Code, 1860.
- 11.** The contention of Respondent No. 5 in his written complaint was that vide Govt. of India S.R.O 4 dated 13.01.2010 published in the Gazette of India dated 23.01.2010 read with the Works of Defence Act, 1903 (7 of 1903), subsequently under which the Public Notice was promulgated by the District Land & Land Reforms Officer and District Magistrate Darjeeling vide memo no. 1594/7/GEN/DEF/DELLRO-DJ/10 dated 12.10.2010, the Central Government had imposed restrictions upon the constructions adjacent to Air Force Stations and all such buildings, trees and plantations infringing the restrictions notified in the Notification and Public Notice above mentioned are unauthorized and illegal and therefore liable to be removed and/or pushed beyond the limits of the restrictions in the interest of National Security.
- 12.** The petitioner further contends that such Notification which does not follow the procedure prescribed under the Works of Defence Act, 1903 (7 of 1903), is deemed to fail/lapse as it violates the rule of law and is unjust, arbitrary and unconscionable.

- 13.** It is the further contention of the Petitioner that the procedures laid down under Sections 3 and 9 of the Works of Defence Act, 1903, requires strict interpretation. The time prescribed under Section 9(1)(a)(b) are to be strictly adhered to, failure, would, therefore, render the notifications issued under Section 3 void-ab-initio.
- 14.** On hearing both sides, the following materials on record are relevant in this case:-

i. **S.R.O. 4 dated 13.01.2010 referred to in order dated**

29.11.2022, in the present case:-

“..... S.R.O. 4 dated January 13, 2010 issued by the Ministry of Defence is a policy by which restrictions have been imposed on use or enjoyment of land in the vicinity of the Indian Air Force Stations and Installations.

It was declared by the said gazette rules and orders that such lands shall be kept free from buildings and other obstructions. S.R.O. 4 provided 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 metres from the crest of the outer parapet’.

Bagdogra Air Force is one of such stations. which prohibits any construction between 100 to 900 metres from the outer crest of the Air Force Station.

Learned DSG submits that it was irrelevant whether the CISF authorities asked the petitioner to raise the construction to accommodate the battalion in the barracks. Until and unless a No Objection is granted by the Air Force Authorities the question of permitting construction between 100 to 900 metres did not arise irrespective of whether the construction was required for the CISF authorities or other authorities. He further submits that a letter written by a Commandant to the AOC, Indian Air Force would not automatically become a permission to the petitioner to raise the construction.....”

- ii. **Vide the said order dated 29.11.2022 it was also observed:-**

“..... According to the petitioner the policy of 2016 will be squarely applicable in this case and the S.R.O. 4 of 2010 has been overridden by the subsequent notifications which were issued by the Government of India, Ministry of Defence to Chief of all the three wings of the Defence. In this case, only a restriction on constructions within 10 metres from the outer wall of the defence installation had been imposed.

This matter has to be decided upon hearing the parties. The issue is whether the 2016 notification which was subsequently published would be applicable in this case or S.R.O. 4 would continue to operate.....”

- iii. **Admittedly, both parties have now submitted that the 2016 notification has now been withdrawn vide an advisory order dated 6th February, 2019 and as such the MOD guidelines of 2011 is to be followed till review is complete.**
- iv. **Admittedly, the petitioner is making the disputed construction within 100 metres.**
- v. Neither the petitioner nor the CISF authorities have obtained any ‘No Objection Certificate’ from the AIR Force Authorities as required as per clause 5 of notification G.S.R 751 (E) dated 30th September, 2015 New Delhi of the Ministry of Civil Aviation.

15. The respondents have filed an affidavit and a supplementary affidavit in opposition in respect of documents in support of their contention being the S.R.O 4 of the Ministry of Defence, dated 13th January 2010, New Delhi and other related documents.
16. **The ‘Works of Defence Act, 1903’** has been placed before this Court by the petitioner. It is submitted by the petitioner on relying upon the said Act that the law requires that if a provision is acted upon, then all the further action and powers related to the said provision is also to be acted upon. It is further submitted that in the present case the connected provisions to Section 3 of the said Act, being Sections 4 to 9 have not been acted upon and as such the notification issued under Sections 3 and 3(2) has now lapsed.
17. The Ld. Counsel for the petitioner has relied upon the following judgments:-

i. Delhi High Court in W.P.(C) 6901/2017, CM No. 28665/2017 on 11.01.2019, Union of India Vs. GNCT of Delhi and Ors.

The Court held that:-

Though the construction therein was not in accordance with the guidelines of 2011, but in view of the later amendment of the said guideline in the year 2016, without such a stipulation, the same was permissible.

Admittedly the said modified guidelines has been withdrawn vide advisory dated 06.02.2019 and as such the guidelines of 2011 are now applicable in the interim period.

Thus this judgment is now not applicable.

- ii.** Calcutta High Court in ***Partha Protim Datta Vs. UOI and Anr. In W.P. 7283(W) of 2016 on 28.04.2016***, wherein the Calcutta High Court held:-

“.....Although the aforesaid orders do not specify the reasons for deferring implementation of the impugned notification with clarity, one cannot lose sight of the observation made by the Hon'ble Supreme Court in paragraph 22 of the decision reported in (2004) 6 SCC 254 : Kusum Ingots & Alloys Ltd. vs. Union of India to the effect that an order staying a parliamentary Act, whether interim or final, would have effect throughout the territory of India, subject of course to the applicability of the Act.....”

- iii.** ***Karnataka High Court in Sri Timmana Gowda and Ors. Vs. The Ministry of Defence Govt. of India, Rasksha Bhavan (2019 1 KarLJ 512) on 11.10.2018.***

The Court in a very similar case as the present one, held as follows:-

“6. *The learned Counsel would further point out that the Constitution Bench of the Hon'ble Apex Court in K.T.Plantation case (supra) had held that in Article 300-A the right to claim compensation can be inferred. It is further stated that Article 300-*

A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive.

*7. In the light of the principles laid down by the Hon'ble Supreme Court in the cases relied upon by the learned Counsel for the petitioners, it was submitted that the respondents are bound to follow the procedure laid down in Act 1903 and by issuing a notification under Sections 3 and 3(2) of Act 1903, the respondents cannot place restrictions on the user of the land for eternity. While submitting that **the Division Bench of this Court** had already held that such notification which do not follow the procedure prescribed under Act 1903, is bound to fail and therefore, the impugned notification should also meet the same fate as the earlier notification that was issued by the respondents.*

8. * * * *

9. The learned CGC submits that the decision in Travels Star Hotels case (supra) is very similar to the one on hand. In that case too, notifications under Sections 3 and 3(2) of Act 1903 were issued, while notification under Section 9 of Act 1903, was not issued.

10. Under similar circumstances, a prayer was made in the petition before the Punjab & Haryana High Court, where notification dated 31.01.1983 was issued under Section 3 of the Act 1903, the Central Government imposed restrictions under Section 7(b) of the Act on use and enjoyment of the land and buildings within the distance of 1000 yards from the crest of outer perimeter ammunition Sub-Depot (17 Fad) Baddowal in the State of Punjab. On 29.05.1999, a notice was issued to the petitioners therein to remove the structures constructed within 1000 yards. A writ petition was filed following the notice, which came to be allowed

directing the respondents to afford opportunity of hearing to the petitioners and thereafter to pass necessary orders. Thereafter, the Collector heard the affected parties and passed an order directing demolition of the buildings. Once again, the affected parties approached the Division Bench in CWP No.8707/1999.

11. *The learned CGC submits that the question raised before the Division Bench was whether notification dated 31.01.1983 had lapsed or is otherwise liable to be quashed? and whether the order of the Collector rejecting objections to demolition was liable to be interfered with?*

12. *The learned CGC further submits that while adverting to the relevant provisions i.e., Section 3 and Section 9 of the Act 1903, the Division Bench has clearly held that there is no indication in Section 9 of the Act that if before the period stipulated therein, public notice is not given, notification under Section 3 read with section 7 will lapse. The Division Bench further held that there is no warrant for inferring such a consequence.*

13. *The learned CGC further points out from the decision of the Division Bench of this Court which dealt with the earlier notification, had considered the judgment of the Punjab and Haryana High Court in the case of Travels Star Hotels (supra) and it was submitted that the Division Bench was in agreement with the decision of the Punjab and Haryana High Court and therefore, the fact situation in this case is similar to the fact situation obtained in the Travel Star Hotels case and not the earlier proceedings which ensued before this Court.*

14. *The learned Counsel places reliance on another unreported judgment of a Division Bench of Punjab and Haryana High Court in the case of Bakshish Singh And Others Vs. Union of India And Others in Civil W.P.No.23259/2011, decided on 30.07.2013. It is submitted that the Division Bench in similar situation followed the decision in Travel Star Hotels case (supra). It was also pointed out that the Division Bench has taken note of the judgment of the*

Apex Court in the case of K.T.Plantation (supra), while adverting to the requirement of compliance of Article 300-A of the Constitution of India. It was pointed out that in the case of Bakshish Singh also, no notification under Section 9 was issued, while the Division Bench held that non-issuance of notification under Section 9 by itself will not render the notification issued under Section 3 non-est or lapsed.

15. *On the other hand, it was pointed out that the Division Bench proceeded to issue directions to the respondents to take steps to make an award, while following the procedure as prescribed under Act, 1903. It was therefore submitted by the learned counsel for the respondents, that as an alternative, he would invite this Court to direct the respondents to take steps to make an award by following the procedure as prescribed under Act, 1903. It was submitted that in the case of Bakhshish Singh, the Division Bench of the Punjab and Haryana High Court had directed the respondents to make an award within a period of four months from the date of receiving certified copy of the order and therefore similar directions could be issued in this matter also.*

17. *Much reliance has been placed on the judgment of the Division Benches of the Punjab and Haryana High Court in the case of Travels Star Hotels and Bakhshish Singh. No doubt the fact situation in the two decisions of the High Court of Punjab and Haryana were that notification under Section 3 was published in the Central Gazette and no notification was issued under Section 9 of the Act, 1903. Whereas, in the case on hand, in the earlier round of litigation when the respondents had issued notification under Section 3 of Act, 1903 and when the matter came up before this Court, it was admitted by the respondents that validity of the notification is only for a period of 18 months and if the time is not extended, the notification stands lapsed. When the matter was taken up in appeal, the Division Bench has specifically held that notification under Section 9 of the Act having not been issued within the period prescribed under Section 9(1)(a), the notification issued under Section 3 stands lapsed. What is to be noted*

is that the Division Bench had taken notice of the decision rendered by the Division Bench of the Punjab and Haryana in the case of Travels Star Hotels (supra) and proceeded to hold that the notification issued under Section 3 had lapsed. This Court is therefore of the opinion that the impugned notifications in these writ petitions should also meet with the same fate.

23. *The other alternative submission that was made by the learned counsel for the respondents that direction could be issued to the respondents to proceed and make an award within a prescribed period, also runs counter to the decision of the Hon'ble Supreme Court. In the case of Jayamma and Others /vs./ Deputy Commissioner, Hassan District, Hassan and Others reported in (2013) 7 SCC 554, their Lordships have held, that as to whether to acquire a particular property or not is for the Government to decide. It is not within the jurisdiction of the Court to compel the Government to acquire any property. It was further held that no doubt, the High Court exercises judicial review of administrative action or inaction. But having regard to the various facts and circumstances or factors, it is for the Government to consider at the permissible stage as to whether a particular property is to be acquired or whether an award is to be passed pursuant to proceedings already initiated. The Act is a complete code as far as such decisions are concerned and the Government is well within its jurisdiction to act as per the scheme provided under the Act. Merely because proceedings under Section 4 of Land Acquisition Act has been initiated, it is not required under law to acquire the land. It is not within the jurisdiction of the Court to compel the Government to pass an award pursuant to notification issued under Section 4(1) of the Land Acquisition Act, even when it is followed by a declaration. Therefore the invitation given by the learned counsel for the respondents that similar directions could be issued to the respondents to pass an award, is clearly not acceptable while holding that it is not within the jurisdiction of this Court."*

18. The Court in the case then chose to follow the decision of the

Division Bench of its own High Court:-

“20. In the case of K.T.Plantation (supra), the Constitution Bench of the Apex Court held that Article 300-A would be equally violated if the provisions of law authorising deprivation of property have not been complied with. It was also held that Article 300A enables the State to put restrictions on the right to property by law. That law has to be reasonable. Which means, it should comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive. These pronouncements of the Hon'ble Supreme Court fortifies the opinion of this Court that no authority can be allowed to impose restrictions on the owner of the land for its beneficial use, except by strictly following the procedure laid down in the law that provides for imposition of such restriction. As stated earlier, if the limitation imposed under Section 9(1)(a)&(b) is not followed, it would leave the land owner under the mercy of the authorities, who issue a notification placing restriction on the user of the land and do not take steps to issue further notification as provided under Section 9.

21. Moreover, the statement of objects and reasons of Act, 1903 exemplifies the intent of the Legislature. It is stated therein that having studied the principles adopted in France and the English statutes, Act, 1903 strives to provide a safe cover to strategic defence installations, subject, however to the important concession that the period within which all Acts in pursuance of such rights must be completed within a period of six months to three years. The last sentence assumes greater importance when it says, ".....as the sites of works of defence must ordinarily be acquired in conformity with that enactment, the imposition of restrictions upon adjoining property should be subject to equally stringent safeguards in the interests of land owners." Their Lordships, in the

case of *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd.* reported in (1987) 1 SCC 424 held that:

"33. Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

24. *The learned counsel for the respondents would place reliance on the judgments of the Hon'ble Supreme Court in the case of Food Corporation of India and another /vs./ Yadav Engineer & Contractor reported in (1982) 2 SCC 499, and Tribhovandas Purshottamdas Thakkar /vs./ Ratilal Motilal Patel and others reported in AIR 1968 SC 372 to submit that this Court is bound by the decision of the Division Bench, even if it is of another High Court and therefore persuades this Court to follow the decision of the Division Benches of the High Court of Punjab and Haryana in the case of Travels Star Hotels and Bakhshish Singh. **This Court is aware that a decision of the Division Bench of the same High Court is a binding precedent over a single judge of this Court. A reading of the judgments cited by the learned***

counsel for the respondents, makes it clear that if a single judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question.

25. As stated earlier, this Court is bound by a decision rendered by a Division Bench of this Court and in the Division Bench decision involving notifications issued by the very same respondents on an earlier occasion, in W.A.No.4442/2009 the Division Bench of this Court has clearly held that when notification under Section 9 of the Act is not issued within the period prescribed under Section 9(a), the notification issued under Section 3 would stand lapsed. Therefore, this Court would only follow the judgment rendered by the Division Bench of this Court, where, under similar circumstances, the notification issued by this very respondents has been quashed and set aside.”

19. The Court then proceeded to quash the said notification under Section 3 and 3(2) of the Act for non-compliance of Section 9 therein.
20. **The respondent/Union of India by way of a supplementary affidavit in opposition has filed documents to show their compliance of the provision of Section 9 on a notification being issued under Section 3 of the Works of Defence Act, 1903.**

21. The documents show that Section 3(2) of the Act has been duly complied with and the publication in the Official Gazette has been made on 13.01.2010.
22. Vide Memo No. 1574/GEN/DLLRO-DJ/10 dated 12.10.2010 (within the time frame), the authority issued a public notice as per Section 9 of the Act, though it appears that the said notice is not exactly as per the requirement of the said provision.
23. Thus it cannot be said that Section 9 of the Act has not been complied with, but admittedly the said public notice under Section 9 is not exactly as per the said requirement of the provision.
24. **The Ministry of Civil Aviation vide a notification dated 30.09.2015 has placed further restriction on constructions, irrigations, trees etc. within a radius not exceeding 20kms as per Rule 4 therein.**
25. **Now presently two views of Division Benches of two different High Courts are before this Court:-**

(i) In ***Travels Star Hotels (India) Ltd. Vs. Union of India of Punjab and Haryana High Court, 2009 SCC online P & H, 6164***, where in the Court held:-

“10. Under similar circumstances, a prayer was made in the petition before the Punjab & Haryana High Court, where notification dated 31.01.1983 was issued under Section 3 of the Act 1903, the Central Government

imposed restrictions under Section 7(b) of the Act on use and enjoyment of the land and buildings within the distance of 1000 yards from the crest of outer perimeter ammunition Sub-Depot (17 Fad) Baddowal in the State of Punjab. On 29.05.1999, a notice was issued to the petitioners therein to remove the structures constructed within 1000 yards. A writ petition was filed following the notice, which came to be allowed directing the respondents to afford opportunity of hearing to the petitioners and thereafter to pass necessary orders. Thereafter, the Collector heard the affected parties and passed an order directing demolition of the buildings. Once again, the affected parties approached the Division Bench in CWP No.8707/1999.

11. *The learned CGC submits that the question raised before the Division Bench was whether notification dated 31.01.1983 had lapsed or is otherwise liable to be quashed? and whether the order of the Collector rejecting objections to demolition was liable to be interfered with?*

12. *The learned CGC further submits that while adverting to the relevant provisions i.e., Section 3 and Section 9 of the Act 1903, the Division Bench has clearly held that there is no indication in Section 9 of the Act that if before the period stipulated therein, public notice is not given, notification under Section 3 read with section 7 will lapse. The Division Bench further held that there is no warrant for inferring such a consequence.”*

(ii) Karnataka High Court in Sri Timmana Gowda and Ors.

**Vs. The Ministry of Defence Govt. of India, Rasksha Bhavan
(Supra).**

“17. *Much reliance has been placed on the judgment of the Division Benches of the Punjab and Haryana High Court in the case of Travels Star Hotels and Bakhshish Singh. No doubt the fact situation in the two decisions of the High Court of Punjab and Haryana were that notification under Section 3 was published in the Central Gazette and no notification was issued under Section 9 of the Act, 1903. Whereas, in the case on hand, in the earlier round of*

litigation when the respondents had issued notification under Section 3 of Act, 1903 and when the matter came up before this Court, it was admitted by the respondents that validity of the notification is only for a period of 18 months and if the time is not extended, the notification stands lapsed. When the matter was taken up in appeal, the Division Bench has specifically held that notification under Section 9 of the Act having not been issued within the period prescribed under Section 9(1)(a), the notification issued under Section 3 stands lapsed. What is to be noted is that the Division Bench had taken notice of the decision rendered by the Division Bench of the Punjab and Haryana in the case of Travels Star Hotels (supra) and proceeded to hold that the notification issued under Section 3 had lapsed. This Court is therefore of the opinion that the impugned notifications in these writ petitions should also meet with the same fate.”

- 26.** The Single Bench of Karnataka then proceeded to follow the view of the Division Bench of the same High Court on the ground that:-

*“**24.** The learned counsel for the respondents would place reliance on the judgments of the Hon'ble Supreme Court in the case of Food Corporation of India and another /vs./ Yadav Engineer & Contractor reported in (1982) 2 SCC 499, and Tribhovandas Purshottamdas Thakkar /vs./ Ratilal Motilal Patel and others reported in AIR 1968 SC 372 to submit that this Court is bound by the decision of the Division Bench, even if it is of another High Court and therefore persuades this Court to follow the decision of the Division Benches of the High Court of Punjab and Haryana in the case of Travels Star Hotels and Bakhshish Singh. **This Court is aware that a decision of the Division Bench of the same High Court is a binding precedent over a single judge of this Court.** A reading of the judgments cited by the learned counsel for the respondents, makes it clear that if a single judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question.”*

27. Whereas the Division Bench of the Punjab & Haryana High Court in *Travels Star Hotels (Supra)* took the view:-

“10. Under similar circumstances, a prayer was made in the petition before the Punjab & Haryana High Court, where notification dated 31.01.1983 was issued under Section 3 of the Act 1903, the Central Government imposed restrictions under Section 7(b) of the Act on use and enjoyment of the land and buildings within the distance of 1000 yards from the crest of outer perimeter ammunition Sub-Depot (17 Fad) Baddowal in the State of Punjab. On 29.05.1999, a notice was issued to the petitioners therein to remove the structures constructed within 1000 yards. A writ petition was filed following the notice, which came to be allowed directing the respondents to afford opportunity of hearing to the petitioners and thereafter to pass necessary orders. Thereafter, the Collector heard the affected parties and passed an order directing demolition of the buildings. Once again, the affected parties approached the Division Bench in CWP No.8707/1999.

11. The learned CGC submits that the question raised before the Division Bench was whether notification dated 31.01.1983 had lapsed or is otherwise liable to be quashed? and whether the order of the Collector rejecting objections to demolition was liable to be interfered with?

*12. The learned CGC further submits that while advertg to the relevant provisions i.e., Section 3 and Section 9 of the Act 1903, the Division Bench has clearly held that **there is no indication** in Section 9 of the Act that if before the period stipulated therein, public notice is not given, notification under Section 3 read with section 7 will lapse. **The Division Bench further held that there is no warrant for inferring such a consequence.**”*

28. In the present case public notice has been given as per Section 9 of the Act though not in the proper format.

29. Thus keeping in mind that the matter herein is of National Security a ‘No Objection Certificate’ from the respondent authority is mandatory

and the defect herein being a technical error, this Court chooses to go with the decision of the P & H High Court in, ***Travels Star Hotels (Supra)***.

30. The Writ Petition is thus disposed of with the direction that the respondents:-

(a) That, as this Court is of the view that there has been (partial) prima facie compliance of Section 9 of the 'Works of Defence Act, 1903', **the notification under Section 3 does not lapse, being 'not void'.**

(b) The District Magistrate, Darjeeling, shall proceed to further comply with the provision of Section 9 of the 'Works of Defence Act, 1903', in continuation with its Public Notice vide memo No. 1574/GEN/DLLRO-DJ/10 dated 12.10.2010, within a period of six months from the date of this order.

31. Thus the proceedings in this case being FIR No. 158 of 2021 under Section 188 of the Indian Penal Code, initiated by respondent no. 5 (Warrant Officer, Assistant Security Officer, 20 Wing, Indian Air Force, Air Force Station, Bagdogra, West Bengal-734014) does not warrant interference by this Court.

32. W.P.A 1158 of 2021 is accordingly dismissed.

- 33.** Interim order, if any, stands vacated.
- 34.** All connected applications, if any, stand disposed of.
- 35.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)