



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2190 OF 2025

1. Shri Ivan Singh,
Aged about 61 years, Occ.
Agriculturist and Businessman,
R/o. Village-Chitki, Tehsil Deoli,
Pulgaon, District – Wardha-442302.
2. Shri Shailesh Wankhede,
Aged about 43 years, Occ.
Agriculturist, Kaotha Zhopdi,
Ward No.1, Tehsil – Deoli, Pulgaon,
District – Wardha – 442 302.

.... **PETITIONERS.**

// VERSUS //

1. Union of India,
Through Secretary, Ministry of
Defence, Raksha Bhavan South Wing,
New Delhi – 110 001.
2. General Officer Commanding,
Headquarters Uttar Maharashtra
and Gujarat Sub Area,
Sitabuldi Fort, Nagpur-440 001.
3. Central Ammunition Depot (CAD)
through its Station Commander
(CAD), Pulgaon Camp,
District Wardha – 442 303.
4. The District Collector,
Wardha District – 442 001.

.... **RESPONDENTS.**

Shri Akshay Mohan Sudame, Advocate for Petitioner.
Shri C.J. Dhumane, Advocate for the respondent Nos.1 to 3.
Shri H.D. Marathe, A.G.P. for the respondent No.4

CORAM : **ANIL S. KILOR AND**
RAJ D. WAKODE, JJ.

DATED : **MARCH 23, 2026.**

ORAL JUDGMENT : (Per : Anil S. Kilor, J)

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. By way of the present writ petition a prayer for quashing and setting aside the declaration SRO No.85, dated 15/04/2002, issued by the respondent No.1 and further declaring safety zone around CAD Pulgaon and thereby prohibiting the local populace from the construction work in any form in the Clearance Zone of 2000 yard around the depot perimeter, is under challenge.
4. The facts in the backdrop of the above referred challenge, are thus :

5. The petitioner owns field Survey Nos. 40, 41, 42, 44, 45/2 and 45/3 situated in village Chitki and Kurla, Tahsil: Deoli, District : Wardha.

6. On 15/04/2002 respondent No.1-Union of India in exercise of powers conferred by Section 3 issued a declaration, SRO No.85, thereby imposing restrictions upon the use and enjoyment of the land specified in Clause (c) of Section 7 of the Works of Defence Act, 1903 (hereinafter referred to as “the Act of 1903”).

7. On 20/04/2023, the respondent No.3 addressed a communication to the respondent No.4 stating that despite the issuance of Public Notice dated 06/09/2001 and SRO 85, constructions are being carried out by civilian population in areas/ villages adjoining CAD, Pulgaon which are within restricted area of 2000 yards.

8. On 27/04/2023, the respondent No.4 published notice thereby declaring safety zone around CAD, Pulgaon and strictly prohibiting local populace from the construction work in any form in the clearance zone of 2000 yards around the depot perimeter.

9. The petitioner thereafter made a representation to the respondents requesting to determine compensation in light of the above referred restrictions imposed. However, no decision is communicated on such request made by the petitioner. Hence, this petition.

10. We have heard the learned counsel for the respective parties.

11. Shri Sudame, learned counsel for the petitioners argues that though SRO No.85 dated 15/04/2002 was issued imposing restrictions specified in Clause (c) of Section 7 of the Act of 1903 and thereafter the communication issued by the respondent No.4, restricting construction by civilians adjoining the CAD, Pulgaon within the restricted area of 2000 yards, no steps were taken to pass award or pay the damages/compensation, as contemplated under the law within a reasonable period.

12. It is argued that even the representation made by the petitioner either to acquire the land or to pay compensation for imposing such restrictions, was not replied either way.

13. He lastly argues that in view of the judgment of the Hon'ble Supreme Court of India in the case of *M/s. Goya Resorts Pvt. Ltd. ..vs..*

Union of India and Ors., in **Civil Appeal No. 6079 of 2017**, decided on 18/12/2024 the impugned SRO No.85 dated 15/04/2002 has lapsed. It is accordingly prayed to quashed and set aside the SRO No.85, dated 15/04/2002, issued by respondent No.1 and also the communication dated 20/04/2023 issued by respondent No.4.

14. On the other hand, Shri Dhumne, learned counsel for the respondent Nos.1 to 3 is not disputing the judgment of the Hon'ble Supreme Court of India in *M/s. Goya Resorts* (supra) and the facts of the present case that after the impugned SRO No.85, dated 15/04/2002 no steps were taken to pass award or to pay the compensation/damages.

15. The learned A.G.P. Shri Marathe reiterates the submissions of the learned counsel for the respondent Nos. 1 to 3.

16. Having considered the rival contentions and on perusal of the record, a question which arises for consideration is, whether the declaration under Section 3, imposing restrictions specified in Clause (c) of Section 7 of the Act of 1903 is sustained or lapsed due to passage of time ?

17. The Hon'ble Supreme Court of India in the case of *M/s. Goya Resorts* (supra), after considering the scheme of the Act of 1903, has held thus :

“4. ...

4.1 The 1903 Act had been promulgated to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order to ensure that such land may be kept free from buildings and other obstructions and for determining the amount of compensation to be made on account of such imposition. Briefly the scheme of the Act as enumerated in various sections is as follows:-

THE WORKS OF DEFENCE ACT, 1908:

Section 3, Declaration and notice that restrictions will be imposed.

A perusal of Section 3 of the Works of Defence Act (hereinafter referred to as 'the Act') reveals the mandatory nature of Section 3 and requirement of strict compliance thereto. It is also clear that while Sub Section 1 speaks about the Central Government considering it necessary to impose restrictions upon the use and enjoyment of land as stated therein and the issuance of declaration, details with regard to the publication of the said declaration are set out in Sub Section 2.

A perusal of Sub Section 2 makes it clear that the declaration referred to in Sub Section 1 has been mentioned as the "said" declaration under Sub Section 2. It is mentioned that 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. Importantly, it is also required to state "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;"

Section 3(3) provides that a declaration issued under Sub Section 2 is conclusive proof "that it is necessary to keep the land free from buildings and other obstructions".

Section 4, Power to do preliminary Acts after publication of notice under section 3, sub-section (2).

Section 4 after referring to Section 3(2) authorizes the Central Government to enter upon and survey and take levels of any land in locality to dig or bore into the sub soil or to do all other acts, what

restriction should be imposed on the use and enjoyment of the land set out boundaries etc. and even to cut down and clear away any part of the standing crop, fence or jungle. The proviso only requires a notice of seven days to be given to the land owner before entering any building or enclosed court or garden attached to a dwelling house. Thus, it is apparent that standing crops can be cut down, land can be dug into and boring done in the sub soil without any notice whatsoever being given to the land owner. It is absolutely clear that such an absolute power confers an absolute arbitrary discretion and power with the concerned authority, which for a nation governed by the Rule of Law is entirely impermissible.

Section 5 ...

Section 6 ...

Section 7, Restrictions.

Section 7 deals with restrictions which are operational based on the distance from "the crest of the outer parapet of the work". It may be noted that Section 7 again begins with reference to the publication of the notice mentioned in Section 3(2). It is further provided in Section 7(a) that in so far as the area within an outer boundary extends to 2000 yards from the crest of the outer parapet of the work, no variation shall be made in the ground level and no building, wall, bank can etc., maintained, erected, added to or altered except with the approval of the General Officer Commanding of the district and on such conditions as he may impose. Section 7 (a) (ii) further provides that even no wood, earth, stone, brick, gravel etc. can be stacked, stored or otherwise accumulated. The proviso stipulates that the person having control over the land is required to remove any manure, agricultural produce etc. "without compensation" on the asking of the Commanding Officer.

Section 7(a)(iv) stipulates that where any building, wall or bank etc. has been permitted under clause (i) then the maintenance etc. shall not be made with materials which are different from those employed in the original building, wall, bank etc. If any different material is to be used, then the approval of the General Officer Commanding of the district is required.

Section 7(b)(ii) stipulates that live hedges, roses, clubs of trees or orchards cannot be maintained, planted or added etc. except with the written approval from the General Officer Commanding of the district.

Section 7(c) imposes further restrictions for areas which extend to a distance of 500 yards from the crest of the outer parapet and stipulates that no building or other construction is to be maintained or erected in the said area. Thus the restrictions in areas falling within 500 yards are

absolute. The only exception is given in proviso thereto which stipulates that it is only the Commanding Officer's written approval and subject to such conditions as he may impose, that a building or other constructions of the surface can be maintained and exempted from the prohibition.

Section 8, Land to be marked out, measured, registered and planned.

Section 8 requires a more detailed plan to be prepared and stipulates that after the publication of the declaration (obviously referring to Section 3) the Collector is to cause the land to be marked out and measured and to "also" prepare a register and a detailed plan which is to be not on a scale smaller than six inches to a mile showing accurately every building, tree and other obstructions.

Section 9, Notice to persons interested.

Section 9 of the Act requires a notice to be given to the interested persons. The said notice has to be before the expiration of a period of 18 months from the declaration referred to in Section 3. Further, the said notice cannot be beyond a period of three years from the publication of the declaration.

Section 10 ...

Section 11 ...

Section 12, Inquiry and award by Collector.

Section 12 contemplates an inquiry and award by a Collector. On the day fixed under Section 9 or on any date to which the inquiry has been adjourned, the Collector is required to proceed to inquire into the objections, concerning the measurements made under Section 8 or the decrease in the value of land by the concerned persons and make an award of the true area of land and the nature of the obstructions from which the land is to be kept free; the compensation which in his opinion should be allowed for damage caused under Section 6 and the restrictions imposed under Section 7 and the apportionment of the said compensation.

Section 13, Award of Collector when to be final.

Section 13 contemplates the making of an award. The award made under Section 13 is final and conclusive evidence of the true area of the land, the nature of the obstructions from which the land is to be kept free, the damage caused under Section 6, the rights restricted under Section 7 and the apportionment of the compensation.

Section 17 ...

Section 23, Matters to be considered in determining compensation.

Section 23 sets out the matters to be considered in determining compensation. The contention that the actual decrease in the market value has been mentioned in Sub clause (a), fails to appreciate that in view of the severe restrictions and the negation of the rights available to a land owner, there is virtually no value left to the said land. The decrease in market value is limited to Section 3 and Section 6.

Section 36 ...

Section 39 ...

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9. Section 9 of the 1903 Act deals with the initiation of the proceedings with respect to enquiry and award by the Collector and further for determination of the compensation etc. to be paid in view of the impact of the notification under Section 3 thereof. As per Section 9 of the 1903 Act, a notice was to be issued to the person interested before the expiration of 18 months from the date of publication of declaration under Section 3 thereof or such other period not exceeding three years from the said publication as the Central Government may by notification in the Official Gazette direct. The language is very clear that either the notice could be issued by the Collector within period of 18 months from the date of publication of the declaration under Section 3 of the 1903 Act; however, such period could be extended by the Central Government by publication of notification in the Official Gazette but such extension could not exceed three years from the date of publication under Section 3 of 1903 Act. In the present case admittedly, no steps had been taken either under clause (a) i.e. within 18 months by issuing notice to the person interested nor the Central Government issued any notification in the Official Gazette extending the said time period which could not be beyond three years from the date of publication of the declaration of notification under Section 3, as per clause (b) of Section 9 of the 1903 Act.

10. Thus, the Collector could not proceed either to make an enquiry or an award. It is admitted position that no award has been made and no compensation as such could have been paid to any of the affected persons. The natural consequences, although not stated in the 1903 Act, would be of the lapsing of the declaration made under section 3 thereof. The same will have to be read in the context, as otherwise the Government could have continued with the declaration under Section 3 of the 1903 Act without suitably compensating the affected perpetually. This is impermissible in law. It would be arbitrary, unjust and unreasonable.”

18. By applying the above referred principles laid down in the case of *M/s. Goya Resorts* (supra) if the facts of the present case are considered, it is evident that after issuance of declaration under Section 3 of the Act of 1903, the respondents had not carried out any further exercise as stipulated and required under the Scheme of the Act of 1903. Even on a request for following such further steps, as contemplated under the Act, no action has been taken in this matter.

19. Thus, in light of the judgment in the case of *M/s. Goya Resorts* (supra), we have no hesitation to hold that the declaration SRO No.85, dated 15/04/2002 does not sustain, but it has lapsed. Consequently, the communication dated 20/04/2023, issued by respondent No.4, needs to be quashed and set aside.

20. At this juncture, the learned counsel for the respondents submitted that as there needs to be continuity with respect to notification under section 3 of the 1903 Act, this Court may keep the quashing of the notification in abeyance for a reasonable period of 6 months to enable the government to carry out fresh exercise before issuing the notification under section 3 of the 1903 Act.

21. While considering the request, we grant liberty to the Central Government to come out with a fresh declaration under section 3 of the 1903 Act after making due enquiry, survey and determining fresh parameters as may be required under the provisions of the 1903 Act, in today's context after preparing all the necessary documents during the enquiry, as may be required, and thereafter to proceed strictly in accordance to the scheme of the 1903 Act and within the time stipulated thereunder. Since continuity has to be maintained with respect to such declaration, we may keep the quashing of the declaration dated 15/04/2002 in abeyance for a period up to 23/09/2026 during which period the fresh declaration may be published.

22. Accordingly, we pass the following order :

- i) The Writ Petition is allowed.
- ii) The impugned declaration under Section 3 of the Act of 1903 vide SRO No.85, dated 15/04/2002, issued by respondent No.1, as well as the communication dated 20/04/2023, issued by respondent No.4, consequently the notice dated 06/09/2001, are hereby quashed and set aside.

- iii) The above quashing of the declaration shall remain in abeyance up to 22/09/2026.
- iv) The Central Government would be at liberty to publish a fresh declaration under Section 3 of the Act of 1903 within the above time, whereafter such fresh declaration shall come into force from the date of its publication.
- v) The respondents shall proceed strictly in accordance with the scheme of the Act after issuing fresh declaration under Section 3 of the Act of 1903.

The Rule is made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(RAJ D. WAKODE, J)

(ANIL S. KILOR, J)

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