

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.**

**C.W.P. No.8707 of 1999**

Date of decision: 01 .7.2009

**M/s Travels Star Hotels (India) Limited**

-----Petitioner

Vs.

**Union of India and others**

Respondents

**CWP No.11422 of 1999**

**Shammi Kapoor**

....Petitioner

vs.

**Union of India and others**

..Respondents.

**CWP No.8570 of 2001**

**M/s Goya Resorts Private Limited**

-----Petitioner

Vs.

**Union of India and others**

-----Respondents

**CWP No.11820 of 1999**

**The Fifth Milestone Party Gardens Pvt. Limited**

-----Petitioner

Vs.

**Union of India and others**

-----Respondents

**CWP No.11633 of 1999**

**M/s Panorama Hotels Pvt. Limited**

-----Petitioner

Vs.

**Union of India and others**

-----Respondents

**CWP No.12017 of 1999**

**Sukhjeet Singh Sidhu**

-----Petitioner

Vs.

**Union of India and others**

-----Respondents

**CWP No.8572 of 2001**

**B.S.Mahal Turning Point, Ferozepur Road, Ludhiana**

-----Petitioner

Vs.

**Union of India and others**

-----Respondents

**CWP No.11632 of 1999**

**M/s Brar Hotels Pvt. Limited**

-----Petitioner

Vs.

**Union of India and others**

-----Respondents

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL  
HON'BLE MR JUSTICE JITENDRA CHAUHAN**

**Present:-** Mr. Sumeet Mahajan, Sr. Advocate with  
Mr. Amandeep Singh, Advocate for the petitioner in  
CWP Nos.8707, 11422, 11633 of 1999.

Mr. A.K.Chopra, Sr. Advocate with  
Ms. Rupa Pathania, Advocate for the petitioner in CWP  
No.8570 of 2001.

Mr. RS Mittal, Sr. Advocate with  
Mr. Atul Gaur, Advocate for the petitioner in CWP  
Nos.11632 of 1999.

Mr. Hemant Sarin, Advocate for the petitioner in CWP No.11820 of 1999.

Mr. J.S.Sidhu, Advocate for the petitioner in CWP No.12017 of 1999.

Mr. Varun Gupta, Advocate for the petitioner in CWP No.8572 of 2001.

Mr. (Dr.) Anmol Sidhu and

Mr. S.K.Sharma, Advocates for Union of India.

**Adarsh Kumar Goel,J.**

1. This order will dispose of CWP Nos.8707, 11422, 11632, 11633, 12017, 11820 of 1999 and 8572 and 8570 of 2001.

All the petitions involve identical issues arising out of notification dated 31.1.1983 issued by the Central Government, as a result whereof, restrictions have been imposed on the use of the land of the petitioners in the vicinity of ammunition depot.

2. In CWP No.8707 of 1999, prayer is to quash order dated 18.6.1999, Annexure P.22 passed by the Additional Deputy Commissioner, Ludhiana, acting as Collector under the provisions of the Works of Defence Act, 1903 (for short, 'the Act'), rejecting objections of the petitioner to the notice for demolition. Other petitions are by and large identical.

3. Vide notification dated January 31, 1983 under section 3 of the Act, the Central Government declared it to be necessary to impose restrictions under section 7(b) of the Act on use and

enjoyment of land in the vicinity of No.1 Ammunition Sub Depot (17 FAD) Baddowal to keep the said land free from buildings and other obstructions. The land described in the Schedule is land within the distance of 1000 yards from the crest of outer perimeter of the works of Defence. The notification is as under:-

“In exercise of powers conferred by Section 3 of the Works of Defence Act, 1903 (7 of 1903), the Central Government hereby declares that it is necessary to impose restrictions specified in clause (b) of Section 7 of the said Act upon the use and enjoyment of the land situated in the district of Ludhiana in the State of Punjab described in the Schedule hereto, annexed, being land in the vicinity of No.1 Ammunition Sub Depot, (17 FAD) Baddowal, in order that the said land may be kept free from buildings and other obstructions.

2. A sketch plan of the said land may be inspected in the office of the Deputy Commissioner, Ludhiana.

#### SCHEDULE-E

All land comprised in the area lying with a distance of 914.40 metres (1000 yards) from the crest of the outer perimeter of the Works of Defence, namely the 1 Ammunition Sub Depot (1 ASD) (17 Fad) Baddowal, in the State of Punjab.”

4. The petitioner purchased the land in the year 1998. Vide notice dated 29.5.1999, Annexure P.13, the petitioner was required to remove the structures constructed within 1000 yards of

the 17<sup>th</sup> Field Depot after the notification. Before issuing the said notice, notice dated 1.4.1999 was issued requiring the petitioner to show cause why the unauthorized buildings be not demolished. The petitioner replied the same on 20.4.1999 by submitting that notification dated 31.1.1983 was vague; no scaled plan had been prepared; mandatory provisions of Section 3 of the Act requiring notice being given, were not complied; no proceedings under sections 6 and 8 of the Act were taken; the building was beyond the restricted area; the petitioner had acted bonafide in purchasing the property and raising the construction; there were other shops and buildings in the area. A sum of Rs.2 crores had been spent on the construction.

5           The petitioner filed CWP No.7992 of 1999 against the impugned notice, which was disposed of on 4.6.1999. With the consent of the contesting respondents, direction to pass order after giving opportunity to the petitioner was issued.

6.           Thereafter, on Collector's direction, measurement report, a copy of the plan prepared by the Army authorities on a scale of 1:5000 and copies of Roznamcha (Proceedings Register) of the Patwari were produced. The said documents were shown to the petitioner. The Collector vide order Annexure P.22 rejected objections of the petitioner by recording following findings:-

- (i) Absence of delegation by the Central Government did not affect power of the Collector appointed by the State Government to function as such. Definition of 'Collector' under Section 2(f) of the Act being 'inclusive' Collector appointed by the State Government was not excluded.
- (ii) The map must have been available in the office for inspection at the relevant time. Its non availability, later, was of no effect as the petitioner never sought to inspect the map at the time of notification in the year 1983. In fact, the petitioner came into picture for the first time only in 1998. The map produced met the requirement of law.
- (iii) Proclamation was duly made and land of the petitioner was within 1000 yards. Requirement of notice under section 9 of the Act was applicable only if structures existed at the time of notification. Similarly, provisions of sections 23 and 35 of the Act applied if there was construction at the time of notification.

- (iv) Existence of other constructions in violation of law did not justify the construction by the petitioner.
- (v) The area was immediately required to be cleared up to meet the security needs and requirements of the Army.

7. The writ petitions were earlier heard and dismissed by a Division Bench of this court on March 19, 2001. It was held:

- (a) Once declaration is made under section 3(1) of the Act, the same was final, effective and operative. Since the Act dealt with sensitive matters of the defence and security, filing of objections was not envisaged before enforcement of restrictions. Claim for compensation could be settled later.
- (b) Use of the word “Crest of the outer parimeter” in the notification was not in conflict with the expression “crest of the parapet” used in section 7 of the Act and existence of the building of the defence was not a *sine qua non*. The defence authorities were not required to

publicly exhibit the plan. Dictionary meanings of 'crest' or 'parapet' were not relevant.

- (c) Omission of notice under section 9 of the Act for making of award did not affect validity of declaration and absence of such a notice or award was of no consequence when no objections were filed or claims made. However, direction was issued to issue notice under section 9 and make award at the earliest.
- (d) Absence of plan was of no consequence as the declaration specified that restriction was to apply to area in the radius of 1000 yards of the outer perimeter of the ammunition depot. The description was sufficient and clear.
- (e) Definition of 'Collector' under section 2(f) of the Act was inclusive definition and did not exclude the Collector of the district. Mere fact that the State Government issued notification dated 8.1.1998 appointing Additional Deputy Commissioner to perform functions of Collector under the Act was of no consequence, as held by the Hon'ble Supreme



court in **P.Kasilingam and others v. P.S.G.College of Technology and others**, AIR 1995 SC 1395 and Full Bench judgment of the Allahabad High Court in **Darbari Lal and others v. Smt.Dharam Wati**, AIR 1957 Allahabad 541.

- (f) Section 6(4) of the Act was applicable only to constructions existing at the time of declaration under section 3 of the Act.
- (g) Other illegal constructions did not create any right in favour of the petitioner. Mere procedural lapse did not vitiate proceedings as held by the Hon'ble Supreme Court in **Venkataswamappa v. Special Deputy Commissioner (Revenue)**, AIR 1997 SC 503 and in any case, Court could decline to interfere under Article 226.

8. While dismissing the petition, direction was also issued to remove unauthorized constructions within one year. Reference was made to events that had taken place at Bharatpur Ordinance Depot in Rajasthan and Dehu Road near Pune. It was observed that conduct of District and police authorities left much to be desired.

Inspite of numerous letters from the defence authorities, the District Administration and the police authorities failed to act which resulted in unauthorised constructions and which could jeopardize security and safety of defence installations. Direction was issued to the Chief Secretary, Punjab to enquire into the matter and to fix responsibility and to take suitable action. In later orders, it was observed that the orders were not carried out sincerely. In CWP No.11820 of 1999, direction was sought and was granted to verify whether structures were beyond 1000 square yards. Similar direction was issued vide order dated 3.4.2001 in Review Application No.125 of 2001 by modifying order dated 19.3.2001 to the effect that if construction was beyond the distance of 1000 square yards, no demolition will take place.

9. On appeal of the petitioner, Hon'ble Supreme Court vide order dated 7.10.2003 set aside the order of this Court and remanded the matter for a fresh decision preferably within four months. The Hon'ble Supreme Court did not express any opinion on merits. Operative part of the order is as under:-

“The learned counsel for the parties agree that the matters require to be decided afresh by the High Court dealing with the factual as well as legal aspects in the light of the rival contentions raised. In the view we are taking, we do not wish to express one way or the other

on the merits of the respective contentions raised on behalf of the parties. Hence, these appeals are allowed. The impugned orders are set aside and the writ petitions are remitted to the High Court for fresh disposal after hearing the parties dealing with the rival contentions both – factual (relating to the area covered by the Notification issued under Section 3 of the Act) and legal.”

10. We have heard learned counsel for the parties.

11. Shri Mahajan, learned counsel for the petitioners in CWP No.8707, 11422 and 11633 of 1999, submitted that in absence of notice under section 9 of the Act within the stipulated period and making of award and giving of compensation, there could be no restriction on construction. Proceedings should be treated to have lapsed. Reliance has been placed on judgment of the Hon’ble Supreme Court in **Babu Verghese & Others v. Bar Council of Kerala and others,** AIR 1999 SC 1281, Paras 30, 31, to submit that compliance with the procedural requirements is mandatory.

12. Shri Chopra, learned counsel for the petitioners in CWP No.8570 of 2001 submitted that in absence of steps under Section 9, the notification lapsed and the same could not be given effect to.

He referred to following documents filed alongwith application dated 19.5.2009:

- (i) Letter Annexure P.8 dated 10.2.1995 addressed by Deputy Commissioner, Ludhiana to Home Secretary, Chandigarh sending a draft notification. The said letter states that the Commandant, 17 Field Ammunition Depot has asked the office for re-notification in Punjab Government Gazette.
- (ii) Letter Annexure P.9 dated 20.3.1995 to the same effect.
- (iii) Letter Annexure P.10 dated 14.12.1995, which is reply from the Home Department to the Deputy Commissioner, Ludhiana to the effect that the notification could not be issued by the State Government.
- (iv) Annexure P.11 which are minutes of meeting held on 28.1.2004 under the Chairmanship of Collector to review the unauthorized constructions.
- (v) Annexure P.12 dated 3.2.2004 which is a letter from the Army authorities to the ADC, Ludhiana about the hearing of the writ petitions.
- (vi) Annexure P.13 which is letter dated 11.4.2007 from Collector Ludhiana to the Central Government on the issue of illegal construction within 1000 yards of Baddowal Ammunition depot stating that in absence of award, land

owners could not be prevented from raising construction.

(vii) Annexure P.14 which is letter dated 30.10.2007 from the department of Home Affairs to Deputy Commissioner, Ludhiana seeking information about the area upto 1000 yards from the defence establishment. Document annexed to Annexure P.14 is information signed by the Branch Assistant containing information of buildings existing within 1000 yards including marriage palaces, houses, shops etc.

(viii) Annexure P.15 is notification dated 22.5.2001 of the Central Government under sections 3 and 7 of the Works of Defence Act, 1903, inter-alia, declaring that area in the vicinity of Indian Air Force aerodromes and installations may be kept free from buildings and other obstructions and no building or structure be constructed within 900 meters from the crest of the outer parapet of Indian Air Force aerodromes and installations.

(ix) Annexure P.16 is letter dated 6.5.2003 mentioning that notification dated May 22, 2001 had expired.

(x) Annexure P.17 is letter dated 10.4.2003 which is similar to Annexure P.16.

(xi) Annexure P.18 is an order of the Himachal Pradesh High Court disposing of a petition in terms of statement of parties.

(xii) Annexure P.19 is a “pictorial depiction of a parapet”.

(xiii) Annexure P.20 is a letter dated 5.9.2000 seeking assistance of Kanungo and Patwari for measurement of notified area.

13. Mr. Jaskirat Singh Sidhu, learned counsel for the petitioner in CWP No. 12017 of 1999, submitted that provisions of sections 3, 6, 7 and 39(4) of the Act envisaged action of demolishing structures within six months only and the limit of area covered by restrictions could be less than 1000 square yards depending upon requirement. He further submitted that notification under section 3 of the Act was defective and mandatory requirements of Sections 3, 6, 9 and 12 of the Act were not complied with and thus, the proceedings should be held to have lapsed. The “crest of the outer parapet of the work” referred to in Section 7 of the Act cannot be equated to outer barbed wire fence. The crest referred to the peak or ridge of a roof, as per dictionary meaning and thus, the measurements are erroneous. The measurement should be as on 31.1.1983 and not as per sketch plan prepared on 13.7.2004. It was also submitted that there was pick and choose policy for demolition of buildings. The Ammunition depot itself should be shifted as large scale construction has already taken place.

14. Mr. Hemant Sarin in CWP No.11820 of 1999 submitted that point of measurement should be the outer crest of parapet of dumps and for this purpose, the constructions by the army authorities after 1983 should not be taken into account. He has filed maps showing position in the years 1983 and 2003 and a diagram of the Ammunition shed to submit that the 'crest' is the top of the structure.

15. Mr. R.S.Mittal, learned counsel in CWP No.11632 of 1999 submitted that the depot itself be shifted elsewhere as its location in the heart of congested city like Ludhiana was not conducive.

16. Learned counsel for the Union of India opposed the submissions and submitted that the original affected owners never raised any objection. Objections have been raised by the petitioners who came into picture after long period. Having regard to the object of imposing the restrictions, the procedural provisions which deal with determination of compensation after restrictions have already become operative could not affect the said restrictions. In any case, the said provisions be read as directory and compliance requirement of issuing of notice or giving of compensation could be done even now. The shifting of Ammunition depot was a matter of policy of the Army which

depended on various strategic reasons and shifting of depot was not viable. The constructions were illegal and raised after the notification and thus, no equity arises in favour of the petitioners.

17. The following questions arise for consideration:-

(i) Whether notification dated 31.1.1983 has lapsed or is otherwise liable to be quashed?

(ii) Whether the order of the Collector rejecting objections to demolition was liable to be interfered with?

18. Before dealing with the above questions, it will be appropriate to reproduce provisions of Sections 3, 6, 7, 9 and 12:-

**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.

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**6. Further powers exercisable after publication of notice under Section 3, sub-section (2).—(1)**

Whenever a declaration has been made and public notice thereof has been given under Section 3, it shall, subject to the provisions of sub-sections (2) to (4), be lawful for such officer as the Central Government may, by general or special order, authorise in this behalf, and for his servants and workmen, to enter and demolish any buildings or other constructions on the surface, to cut down or grub up all or any of the trees, to remove or alter all or any of the banks, fences, hedges and ditches, to make underground and other drains, to fill up all excavations, and demolish all buildings and other constructions below the surface, and generally to level and clear the said land and do all such acts for levelling and clearing the same as he may deem necessary or proper, but in such manner nevertheless that evidence

of the boundaries of the lands held by different owners may be preserved.

(2) The powers conferred by sub-section (1) shall not be exercised,—

(a) save as otherwise provided by sub-section (3), before the making of the award hereinafter referred to in Section 12, nor

(b) save as otherwise provided by sub-section (4), after the expiration of six months from the making of the said award, or any shorter period on the expiration of which the officer exercising such powers gives notice to the Collector that there will be no further exercise of them.

(3) In case of emergency, the Central Government may, by notification in the Official Gazette, declare that all or any powers conferred by sub-section (1) may be exercised at any time within six months after the publication of the notice referred to in Section 3, sub-section (2), and such powers may be exercised accordingly, and the said notification shall be conclusive proof of emergency.

(4) Nothing in sub-section (2) shall be deemed to preclude any such officer or his servants or workmen from exercising at any time the said powers for the purpose of removing, wholly or in part, any building or other obstruction maintained, created, added to, altered, planted, stacked, stored or otherwise accumulated in contravention of this Act or of any rule or order made

thereunder or of any condition prescribed in accordance therewith.

**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;

(ii) no wood, earth, stone, brick, gravel, sand or other material shall be stacked, stored or otherwise accumulated :

Provided that, with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, road-ballast, manure and agricultural produce may be exempted from the prohibition:

Provided also that any person having control of the land as owner, lessee or occupier shall be bound forthwith to remove such road-ballast,

manure or agricultural produce, without compensation, on the requisition of the Commanding Officer;

(iii) no surveying operation shall be conducted otherwise than by or under the personal supervision of a public servant duly authorised in this behalf, in the case of land under the control of military authority, by the Commanding Officer and, in other cases, by the Collector with the concurrence of the Commanding Officer; and

(iv) where any building, wall, bank or other construction above the ground has been permitted under clause (i) of this sub-section to be maintained, erected, added to or altered, repairs shall not, without the written approval of the General Officer Commanding the District, be made with materials different in kind from those employed in the original building, wall, bank or other construction.

(b) Within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) shall apply with the following additional limitations, namely :—

(i) no building, wall, bank or other construction of permanent materials above the ground shall be maintained otherwise than with the written approval of the General Officer Commanding the District and on such conditions

as he may prescribe, and no such building, wall, bank or other construction shall be erected :

Provided that, with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, huts, fences or other constructions of wood or other materials, easily destroyed or removed, may be maintained, erected, added to or altered :

Provided, also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to destroy or remove such huts, fences or other constructions, without compensation, upon an order in writing signed by the General Officer Commanding the District; and

(ii) live hedges, rows or clumps of trees or orchards shall not be maintained, planted, 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.

(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely :—

no buliding or other construction on the surface, and no excavation, building or other

construction below the surface, shall be maintained or erected :

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, a building or other construction on the surface may be maintained and open railings and dry brush-wood fences may be exempted from this prohibition.

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**9. Notice to persons interested.**—(1) At any time before the expiration of—

(a) the period of eighteen months from the publication of the declaration referred to in Section 3, or

(b) such other period not exceeding three years from the said publication as the Central Government may, by notification in the Official Gazette, direct in this behalf,

the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interests in such land affected by anything done or ordered in pursuance of such declaration may be made to him :

Provided that, where anything has been done in exercise of the powers conferred, in case of emergency, by Section 6, sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter.

(2) Such notice shall state the particulars of any damage ordered to be done or, in the case referred to in Section 6, sub-section (3), done in exercise of any of the powers conferred by the said section, and the particulars of any restrictions attaching to the land under Section 7, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for damage to such interests and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business.

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**12. Inquiry and award by Collector.**—On the day fixed under Section 9 or on any other day to which the inquiry has been adjourned, the Collector shall proceed to inquire into the objections (if any) which any person interested has stated pursuant to a notice given under the said section to the measurements made under Section 8, and into the decrease in the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(a) the true area of the land and the nature of the obstructions from which the land is to be kept free;

(b) the compensation which in his opinion should be allowed for any damage caused or to be caused under Section 6 and for any restrictions imposed under Section 7; and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether they have respectively appeared before him or not.

**19.** Reference to the preamble of the Act shows that the Act was enacted to provide for imposing restrictions on use and enjoyment of land in the vicinity of works of defence so that land may be kept free from buildings and other obstructions. Section 3 provides for issuance of notification by the Central Government



and the said declaration is conclusive proof that it was necessary to keep the land free from buildings and other obstructions. Section 6 (1) of the Act provides for demolition of any existing building or other structures etc. to level and clear the land. Section 7 contemplates restrictions as may be declared by the Central Government on area which may extend to a distance of 2000 yards from the crest of the outer parapet of the work and some of the restrictions can extend upto the boundary of 1000 yards from the crest of the outer parapet of the work while third category of restrictions can be upto distance of 500 yards from the crest of the outer parapet of the work. The said restrictions may be against change of the ground level, against stacking or storing of any material against making of any construction.

20. Section 9 of the Act provides for notice within 18 months from declaration under section 3 of the Act or such extended period upto three years as may be specified for inviting claims to compensation. Section 12 of the Act contemplates enquiry into the objections and making of award by the Collector. The Collector can, inter-alia, determine area of the land and the nature of obstructions from which the land is to be kept free and compensation for damage under section 6 and for restrictions under Section 7. Section 18 of the Act provides for a reference to the

Court at the instance of a party who may not be satisfied with the award. Section 23 of the Act lays down considerations for determining compensation. Section 35 of the Act provides for manner of service of notice. Section 39 of the Act provides for demolition of buildings and enforcement of restrictions.

21. Though, unlike section 11-A of the Land Acquisition Act, 1894, no period has been specified for making of award, process of making of award has to be initiated within 18 months unless time is extended upto 3 years as provided under section 9 of the Act. Making of award is a condition precedent for demolition of existing structures but restrictions under section 7 comes into operation immediately on publication of notice under section 3 of the Act.

22. We now proceed to deal with the questions formulated above.

**Re: (i)**

23. It is clear from provisions of section 3 read with section 7 of the Act that on requisite satisfaction being arrived at as to requirement of necessity to impose restrictions on use and enjoyment of the land in the vicinity of any work of defence or of any site or other restrictions as may be declared under Section 7, notification can be issued which is conclusive proof of necessity to

keep the land free from buildings and obstructions and to bring into force the restrictions stipulated under section 7 of the Act. The provisions are not under challenge. The scheme of the said provisions is to bring into force the restrictions forthwith. Enforcement of such restrictions is not dependent on making of any award or making of compensation. Subsequent inaction for failure of duty to determine and pay compensation does not have the effect of annulling the restriction which comes into force as soon as the notification is published. Only right which may survive on account of non compliance of provisions of section 9 or 12 of the Act, is to make a claim for the compensation. In case of gross delay, if an aggrieved party approaches the Court, the Court can mould the relief to do complete justice. A citizen cannot, however, treat the restrictions placed to be *non est* nor the notification be lapsed.

24. In the context of Land Acquisition Act, 1894, the Hon'ble Supreme Court has considered the effect of delay in making award within the period stipulated under Section 11-A. It was held that provisions of vesting of land in the State where urgency was invoked were not affected by not making of award within statutory period. Once land was vested in State, even if compensation was not paid, as required, vesting could not be

undone. This view supports our conclusion that since declaration under Section 3 read with Section 7 comes into force forthwith, delay in taking steps within the time stipulated will not reverse the effect of the notification. In **Satendra Prasad Jain v. State of U.P.**, (1993) 4 SCC 369, Para 15, it was observed:-

“15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17 (1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.

25. 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. There is

no warrant for inferring such a consequence. The provisions have been enacted in the interest of safety of the people and the defence of the country.

26. The Privy Council in Montreal Street Rly. Co. v. Normandin, 1917 A.C. 170 (B), observed:-

"..... The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th ed., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

The above observations were reiterated by the Hon'ble Supreme Court in State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912. Same view has been followed by the Hon'ble Supreme Court, inter-alia, in State of U.P. v. Babu Ram Upadhyaya, AIR 1961 SC 751, The Remington Rand of India Ltd., v. The Workmen, AIR 1968 SC 224 and Dattatraya Moreshwar v. State of Bombay, AIR 1952 SC 181.

27. It is further well settled that non compliance even of a mandatory requirement can be waived if no public interest is

involved. Reference may be made to judgments of the Hon'ble Supreme Court in **Dhirendra Nath Gorai v. Sudhir Chandra Ghosh**, AIR 1964 SC 1300 and **Martin and Harris Ltd. v. Vith Addl. District Judge**, AIR 1998 SC 492.

28. The writ petitions were filed in the year 1999 and the writ petitioner in CWP No.8707 of 1999 purchased the land only in the year 1998 i.e. 15 years after the impugned notification dated 31.1.1983. There is nothing to show that any construction was done prior to the petitioner coming into picture. No grievance was made by the original owner against enforcement of restrictions.

29. We are of the view that apart from notification being not affected by non compliance of the provisions for taking steps to make award, the said provisions are liable to be read as directory having regard to the subject matter of legislation. The restrictions having come into force immediately after notice under section 3 of the Act, the restrictions having never been challenged, action of the petitioners in raising construction in contravention of the said restrictions is illegal and could be undone. It is not case of demolition in violation of section 6 of the Act, as it is not the case of the petitioners that there were any pre-existing structures. The petitioners never sought enforcement of requirement of section 9 or Section 12 of the Act. Thus, not taking steps or not making of

award will not render the impugned notification inoperative. However, the petitioners will be entitled to a direction for steps being taken forthwith and to suitable compensation.

30. Thus, we conclude by holding that absence of award does not vitiate the impugned notification. Power of demolition of existing structures under section 6 of the Act could not be exercised without award but in the present case, exercise of said power relates to demolition of structure raised after the notification under section 3 of the Act. Enforcement of restrictions under section 7 of the Act was permissible even before making of the award. If the affected party did not object to the enforcement of restrictions and did not move the Court for a long period, the rigor of the requirement of making of award can be held to be waived so as to not to interfere with the action which may have been taken till a person approaches the Court. It has been observed that belated challenge to acquisition may not be entertained. Reference may be made to judgment of the Hon'ble Supreme Court in **Municipal Corporation of Greater Bombay, v. The Industrial Development Investment Co.Pvt. Ltd., and others**, (1996) 11 SCC 501, para 29. Reference may also be made to some other judgments taking the view that delay may be a ground not to entertain a petition under Article 226 of the Constitution:-

(i) **Netai Bag v. State of W.B.** (2000) 8 SCC 262, Paras 26,27.

(ii) **Urban Improvement Trust v. Bheru Lal**, (2002) 7 SCC 712, Para 21.

(iii) **Swaika Properties (P) Limited v. State of Rajasthan**, (2008) 4 SCC 695, paras 16-18.

(iv) **P. S. Sadasivaswamy v. State of T.N.**, (1975) 1 SCC 152, Para 2.

(v) **Kamini Kumar Das Choudhury v. State of West Bengal**, AIR 1972 SC 2060, para 10.

(vi) **U.P.Jal Nigam and another v. Jaswant Singh** and another, (2006) 11 SCC 464, para 12.

(vii) **Durga Prasad v. Chief Controller, I&E**, AIR 1970 SC 769, paras 4,5 and 7.

(viii) **State of MP v. Nandlal Jaiswal & Ors**, AIR 1987 SC 251, para 23.

(ix) **Karnataka Power Corporation Limited v. K.Thangappan and another**, AIR 2006 SC 1581, paras 6-10.

(x) **Chandra Bhushan and another v. The Deputy Director of Consolidation UP (Regional) Lucknow and others**, AIR 1967 SC 1272, para 2.

31. Judgment in **Babu Verghese** (supra), relied upon by Shri Mahajan, has no relevance to the issue involved. Therein, the issue considered was validity of extension of the term of the Bar Council. Rule 6 contemplated decision by circulation if agreed to by majority of members. Decision to extend the term was taken by



circulation without majority agreeing to do so. The requirement of majority agreeing for decision being taken by circulation was held to be mandatory. As already observed, there is no general rule to determine when a provision is directory or mandatory. Object of a statute has to be looked into. When a provision relates to performance of public duty and holding action taken in breach of duty to be void, results in serious inconvenience to public and defeats the objects of legislature, such provision is held to be directory.

32. Letters referred to by Shri Chopra are mere opinion of the officers and are not at par with decision of the Government. Reference may be made to law laid down in **Sethi Auto Service Station v. DDA**, (2009) 1 SCC 180, paras 14, 17, 22. It cannot be held on the basis of the said letters that notification lapsed as is sought to be contended. The contention of Shri Sidhu and Shri Sarin that impugned notification was vitiated on account of non compliance of provisions of sections 9 and 12, has already been dealt with. The contention that crest of the outer parapet of the work referred to in section 7 could not be equated with crest of the outer perimeter of the ammunition depot mentioned in the impugned notification, has also no merit. Outer parapet of the work or perimeter of the work in the context cannot be held to be

different. Contention that measurement should be taken from the peak or ridge of the roof and not from the barbed wire cannot be accepted. The word 'Parapet' denotes a low wall. The word 'parapet' can include the outer boundary and the crest of parapet can include peak of the outer boundary and not necessarily peak of the building as such.

33. Contention of Shri Mittal that depot itself should be shifted, has absolutely no merit. It is not for this Court to take decision on such strategic matters of defence. A private commercial interest has to make way to the public interest and value of human lives and strategic interest of the defence cannot be subordinated to the commercial interest of the writ petitioners. Submission that lot of construction activity in violation of law has already taken place, has no legal force. Large scale illegality with or without collusion of authorities cannot be a ground to compromise on rule of law, strategic interest of the defence and the safety of the people.

34. We, thus, hold that impugned notification is not liable to be quashed and only right of the petitioners is to get compensation, as already observed.

35. In view of our finding in para 29 above, we direct the Collector to make the award after following the provisions of

Sections 9 and 12 and we further hold that the petitioners will be entitled to interest on the compensation so determined from the date of enforcement of the restrictions i.e. the date of notice under section 3 itself at the rate of 9% per annum for the first year and 15% per annum thereafter, which is the rate of interest statutorily permitted under the Land Acquisition Act, 1894. This will compensate the petitioners for delay in making of award. It is also made clear that the issue of measurement of the area covered by restriction will also be a part of enquiry by the Collector as provided under Section 12 of the Act. The petitioners may file their claims within one month from today and the award be made within three months from today. If any party is aggrieved, further action can be taken as per statutory provisions.

36. Question (i) is answered accordingly.

**Re: (ii)**

37. There are three limbs of this question.

(i) Applicability of power of demolition under section 6 without an award.

(ii) Enforcement of restrictions under section 7 without making award.

(iii) Effect of absence of an award on existence and validity of declaration under section 3 read with section 7.

38. We have already held above that power of demolition of pre-existing structures under section 6 of the Act can be exercised only after making of the award while restrictions under section 7 of the Act come into force even before making the award. The present case does not relate to exercise of power under section 6 as constructions have been raised after the notification. Absence of award does not affect the impugned notification. The constructions raised in violation of restrictions under section 7, after the notification are, thus, illegal. The same are liable to be demolished without any compensation. Question whether constructions fall within the prohibited area covered by the notification is a matter which can be examined by the Collector or in further proceedings arising from the award of the Collector. This disputed question cannot be gone into by this Court. Order of the Collector is not, thus, liable to be interfered with subject to direction in earlier part of this judgment. Question (ii) is answered accordingly.

39. Our conclusions are as under:-

(I) Notification under section 3 read with section 7(b) comes into force forthwith and is conclusive proof of necessity to keep the land free from buildings and other obstructions.

(II) Absence of taking of steps for making of award does not affect validity and enforcement of the notification under section 3 read with section 7(b). However, the affected party is entitled to a direction for the said steps being taken and for compensation for the delay.

(III) Constructions existing on the date of notification cannot be demolished without prior compensation but constructions raised in violation of notification can be demolished without compensation.

(IV) Declaration of measurement of area from the “crest of the outer perimeter of the works of defence” is not in conflict with expression “from the crest of the outer parapet of the work” and thus, notification is not liable to be quashed.

(V) Letters referred to in para 12 above do not have the effect of lapsing of the notification.

(VI) Large scale illegal constructions in violation of the notification do not create any equity in favour of the petitioners. Direction to shift Ammunition depot cannot be given.

(VII) Though, the petitioners can be held to have waived their rights by not taking any immediate remedies against the impugned notification, inaction of the respondents in taking steps to make award is not justified. The petitioners are entitled to a direction for award being made within three months from today. They are also entitled to compensation equal to interest at the rate of 9% P.A. for the first year and 15% P.A. thereafter, on the compensation assessed, from the date of notification under section 3. The dispute of measurement of the area will also be covered by enquiry under section 12. The petitioners will also be entitled to their remedies against the award in accordance with the statutory provisions.

(VIII) Subject to direction for making of award and availing of further remedies, in terms of para 35 above, the order of Collector directing the demolition is not liable to be interfered with.

40. In view of above, the writ petitions are dismissed, subject to directions in para 35 for making of award and remedies of the petitioners against the same. The petitioners may appear before the Collector for further proceedings on 27.7.2009.

(Adarsh Kumar Goel)  
Judge

July 01 , 2009  
'gs'

(Jitendra Chauhan)  
Judge