

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6079 OF 2017
M/S.GOYA RESORTS PVT. LTD. ...APPELLANT(S)
VERSUS
UNION OF INDIA AND ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.6081 OF 2017

CIVIL APPEAL NO.6068 OF 2017

CIVIL APPEAL NO.6067 OF 2017

CIVIL APPEAL NO.6069 OF 2017

CIVIL APPEAL NO.6080 OF 2017

CIVIL APPEAL NOS.6086-6089 OF 2017

CIVIL APPEAL NO.6070 OF 2017

CIVIL APPEAL NO.6074-6075 OF 2017

AND WITH CIVIL APPEAL NO.9014 OF 2017

ORDER

1. Civil Appeal No.6079 of 2017, Civil Appeal No.6081 of 2017, Civil Appeal No.6067 of 2017, Civil Appeal No.6068 of 2017, Civil Appeal No.6069 of 2017, assail the correctness of the judgment and order dated 01.07.2009 passed by the High Court of Punjab and Haryana at Chandigarh in a bunch of writ petitions praying for quashing of the notice dated 05.06.2001 and other similar notices for demolition of their respective constructions and also for a declaration that notification dated 31.01.1983 made under section 3 of the Works of Defence Act, 1903¹ as having lapsed due to efflux of time. The High Court dismissed the said writ petitions by the impugned common judgment.
2. Civil Appeal No.6080 of 2017 assails the correctness of the order dated 21.08.2010 passed by the same High Court dismissing the writ petition for similar relief, relying upon the judgment dated 01.07.2009.
3. There are other appeals before us pertaining to the notifications under the 1903 Act, but not raising

¹ The 1903 Act

identical issues or seeking similar reliefs. The details of these appeals are as follows:

- i. Civil Appeal No.6086-6089 of 2017 assails the correctness of the judgment and order dated 16.12.2008 and subsequent orders passed in contempt proceedings before the Punjab and Haryana High Court wherein the High Court had issued appropriate directions in a Public Interest Litigation filed by the private respondents seeking directions to restrain the appellants herein from raising their construction in violation of the notification issued under the 1903 Act. Aggrieved by the directions issued by the High Court by the impugned judgment, the respondents therein are before this Court.
- ii. Civil Appeal No. 6070 of 2017 challenges the judgment and order dated 19.04.2011 wherein the Punjab and Haryana High Court has upheld the notification dated 17.03.1994 issued under the 1903 Act. The challenge before the High Court was with respect to the restriction imposed on the construction by the appellants in this appeal after passing of

the notification. The challenge was on the grounds that there were buildings already constructed in the said area as well as prior sanctions granted to the appellants by competent authorities, and not on the grounds of inaction at the end of the authorities as per the 1903 Act subsequent to the issuing of the notification under the 1903 Act.

- iii. Civil Appeal No. 6074-6075 of 2017 assails the correctness of the judgment and order dated 09.12.2011 whereby the Punjab and Haryana High Court has upheld the demolition order against the existing constructions falling within the limits of the works of defence, passed in light of a notification dated 22.05.2011 issued under the 1903 Act. The challenge herein before the High Court was to the order of demolition of existing constructions on the grounds of regularization of the existing constructions and the prospective application of the notification therein.

iv. Civil Appeal No. 9014 of 2017 assails the correctness of the judgment and order dated 16.01.2012 in contempt proceedings wherein the Punjab and Haryana High Court dropped the contempt proceedings in light of the issue being sub judice before this Court. The contempt proceedings before the High Court were arising out of a writ petition preferred by the appellants in this civil appeal, a Residents Welfare Association of a pre-existing residential colony, seeking restraint of new constructions in the 900 m limit of the ammunition depot in the area and demolition of the illegally constructed buildings after passing of the notification dated 29.08.1987.

Since the issue involved in these appeals does not relate to any challenge to the notification issued under 1903 Act on similar grounds, we are of the view that these appeals to be separated from other appeals referred to above and may be heard and decided independently. It is directed accordingly.

4. For brevity, we are referring to the facts in Civil Appeal No.6079 of 2017. Facts giving rise to the present appeals are summarised hereunder:

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, Payment for damage.

Section 5 which deals with payment of damages on account of the entry under Section 4 again stipulates that in case of a dispute regarding the sufficiency of the amount, the decision of the Collector or other Chief Revenue Officer of the district shall be final. The said section again demonstrates the absolute power available with a concerned authority to determine what compensation is to be paid on account of the damage caused to the land including the damage caused on account of clearing away any standing crop, fence or jungle as also on account of digging, boring etc. which may have been done into the sub soil.

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

Section 6 again refers to the powers exercisable after publication of notice under Section 3(2). After the declaration has been made and public notice has been given under Section 3, (subject to the provisions of Sub section (ii) – (iv) of Section 6) the concerned officer of the Central Government can enter into a building and demolish a construction, cut down or grub up any of the trees, remove banks, fences, hedges, make underground drains, fill up excavations, demolish all buildings and other constructions etc. The said absolute power is limited only by Sub Sections 2 & 3 which stipulate that the said power under Sub Section 1 shall not be exercised before the making of the Award under Section 12

and nor after the expiration of six months after the making of the Award.

Section 6 (3) deals with the exercise of emergency powers.

Section 6(4) stipulates that nothing in Sub Section 2 precludes an Officer from exercising powers for the purpose of removing any building or other obstructions maintained, created, added to, altered, planted etc., in contravention of the Act.

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 etc., can be 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, Power to require and enforce the making of statements as to names and interests.

Section 10 confers a power on the Collector to require persons to make or deliver to him at a time and place a statement containing the names of other persons possessing any interest in the land or part thereof as co-proprietors, sub-proprietors, mortgagee, tenant or otherwise.

Section 11, Application of certain sections of the Indian Penal Code.

Section 11 stipulates that any person required to deliver a statement under Section 9 or Section 10 is legally bound to do so within the meaning of Section 175 and 176 of the Indian Penal Code. Section 175 and 176 deal with omission to produce document or electronic record to public servant by person legally bound to produce it and omission to give notice or information to public servant by person legally bound to give it respectively.

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, Supplementary proceedings.

Section 17 permits supplementary proceedings to be taken in the manner prescribed by Section 9 and subject to the time limit imposed by Section 9(1).

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, Penalties.

Section 36 provides the penalty to be imposed on any person who obstructs any person from doing any of the acts stipulated in Section 4, 6 or 8 or causing damage under Section 6 or contravenes the provisions of Section 7, a penalty of imprisonment upto one month or with fine upto Rs. 50 or both has been provided.

Section 39, Demolition of part of house or building and imposition of restrictions on part of land.

Section 39 which deals with the demolition of a part of a house or a building or imposition of restrictions on the part of land, further demonstrates the absolute arbitrariness of the said Act of 1903.

Sub Section 2 stipulates that if in the case of any claim referred to in Section 23(1) (c) i.e. where a person is not able to use land conjointly with his other land, and if the Central Government is of the opinion that the claim made by such person is unreasonable or excessive, it may at any time before the making of the award order that the restrictions be imposed upon the whole of the land.

Sub section 3 further compound the said illegality by providing that no fresh declaration of proceeding under Section 3 to 10 is required for excise of powers under Sub section (2), but the Collector shall

without delay make an award under Section 12 for the said land.

4.2 As per the provisions of the aforesaid 1903 Act, the Ministry of Defence, Government of India issued a notification dated 31.01.1983 which was published on 23.04.1983 under Section 3 of the 1903 Act, being SRO No.119. This related to restrictions being imposed in the vicinity of No.1 Ammunition Sub Depot (17) (FAD) Baddowal, Ludhiana, State of Punjab. The said notification reads as under:

“EXTRACT
From the
GAZETTE OF INDIA
New Delhi, the 23rd April, 1983.

MINISTRY OF DEFENCE
New Delhi, the 31st January, 1983.

S.R.O. No.119 – In exercise of the 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.

{No.54556/OIGS/MO-2}
K.A. NAMBIT
Joint Secretary”

4.3 The Additional Deputy Commissioner, Ludhiana exercising powers of Collector under the 1903 Act issued a notice dated 05.06.2001 to Shri Manmeet Singh Grewal, Director of appellant M/s Goya Resorts Private Limited in Civil Appeal No.6079 of 2017, stating that unauthorised constructions were being raised, such as structure known as Casara La Baron within the prohibited limits in violation of the 1983 notification. As such the said offending constructions may be removed within 10 days, failing which the same would be removed by the authority at the expense of the appellant.

Aggrieved by the same, the appellant M/s Goya Resorts Pvt. Ltd. preferred writ petition before the High Court which was registered as CWP No.8570 of 2001.

- 4.4 The grounds on which the writ petition was filed was primarily that after the notification dated 31.01.1983 was issued under Section 3 of the 1903 Act, the respondents had not carried out any further exercise as required under the scheme of the 1903 Act and therefore, the said notification under Section 3 was liable to be declared as lapsed and no proceedings under the 1903 Act could have been maintained.
- 4.5 Similar notices were issued to various other parties. These parties also approached the High Court, and all these petitions were clubbed together and decided by the impugned common judgment dated 01.07.2009. The High Court decided eight (08) writ petitions. The High Court noticed that the respondents had failed to comply with the scheme of the 1903 Act by not taking further steps as required thereunder but still it declined to quash the notification and dismissed the writ petition. However, it directed

the Collector to make the award subject to sections 9 and 12 of the 1903 Act and also awarded interest on the compensation so determined @9 % p.a. for the first year and @15% p.a. thereafter from the date of enforcement of the restriction till the date payment is made.

Aggrieved by the same, the present appeals have been preferred.

5. Initially notices were issued, and interim orders were granted against the demolition, however, vide order dated 21.08.2009, the appellants were restrained from raising further constructions. During the course of hearing in the year 2013 itself, certain issues were raised which compelled Union of India and the State Government to find out an amicable solution to the problem, as apparently the arguments were advanced relating to complete inaction on the part of the respondents by not taking any steps under the scheme of the 1903 Act after the notification dated 31.01.1983 was issued under section 3 thereof imposing the restrictions. However, despite being heard on a number of occasions the matter could not

be finally decided. Much later in 2023, when the matter came up for hearing, an issue was raised to test the validity of the 1903 Act as to whether it could be sustained being hit by Part III of the Constitution of India. Accordingly, notices were issued to the learned Attorney General. Later on, upon an objection raised by the learned Attorney General that no factual foundations had been laid either in the writ petition before the High Court or in the present appeals with regard to the challenge to the validity of the 1903 Act, it may not be appropriate for this Court to examine and test the validity of the said Act. The said contention was rejected by the Court. However, the appellants were directed to provide points to be raised in order to test the validity of the 1903 Act, which has since been supplied in the year 2023 itself.

6. The matter was taken up for hearing on various dates in 2023 and 2024. In the meantime, learned Attorney General had placed before the Court a communication from Ministry of Defence that a High Powered Committee had been constituted to look into the various issues, including the validity of the Act and to propose any amendments as may be necessary to bring the Act in line with Part III of the

Constitution of India. However, the said exercise ultimately failed and no conclusive or effective results could be brought forth by the learned Attorney General and therefore we have heard the matter on the merits as to whether the notification dated 31.01.1983 could be sustained or would stand lapsed with the passage of time as no further steps had been taken by the Union or the States under the scheme of the Act.

7. We were also informed that there are petitions pending before the Punjab and Haryana High Court challenging the vires of the 1903 Act and the High Court is still considering the said petitions. It was therefore one of the submissions of the learned Attorney General that this Court may not directly entertain and decide upon the validity of the Act and may take it up only in appropriate proceedings where proper foundation has been laid and adequate opportunity has been afforded to the Union of India before the High Court.
8. Without going into much details, we find from the record that the submissions advanced by the learned senior counsel appearing for the appellants that no steps have been taken other than issuing the

notification under section 3 of the 1903 Act to be substantiated. The respondents have not been able to produce any record to show that the scheme of the 1903 Act has been followed in letters and spirit by taking appropriate steps stage-wise as per the scheme of the Act, which has already been briefly described in the very beginning.

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 persons perpetually. This is impermissible in law. It would be arbitrary, unjust and unreasonable.

11. Therefore, without going into any other issues raised on behalf of the appellants, we are inclined to quash the impugned declaration dated 31.01.1983 under Section 3 of the 1903 Act and consequently the impugned notices directing for demolition.
12. Apart from the above ground, many other grounds have been raised during the course of arguments on behalf of the appellants but we need not delve into the same since we are convinced that the ground taken for quashing the notification is good enough and there is no need to further burden this order.
13. Learned Attorney General has laid great stress on the fact that the 1903 Act is a special class of legislation by itself and required in interest of national security and defence. It also takes into its ambit the safety and security of life and property falling in the vicinity of works of defence.
14. We are in full agreement with the said submissions of the learned Attorney General and there is no hesitation on our part to hold that the 1903 Act is in the interest of the national security and defence but at the same time, under its guise the citizens cannot be deprived of or denied the use of their property illegally and in violation of the statutory provisions.

There has to be a balance between the purpose and object of the 1903 Act and the legal right of the citizens to use and enjoy their property. The 1903 Act in its scheme does provide that balancing factor to be carried out by the authorities to take appropriate steps by giving show cause notice considering the claims, making an enquiry, making an award, and determining the compensation for the loss suffered. The respondents having failed to take any further steps for forty years, we have no option but to strike down the declaration made under Section 3 of the 1903 Act dated 31.01.1983.

15. Learned Attorney General 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 3-4 months to enable the government to carry out fresh exercise before issuing the notification under section 3 of the 1903 Act.
16. While doing so, we provide that Central Government would be at liberty, 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 31.01.1983 in abeyance for a period up to 31.05.2025 during which period the fresh declaration may be published. Accordingly, we allow the appeals as follows:

- a) The impugned judgment of the High Court is set aside.
- b) The impugned declaration under Section 3 of the 1903 Act dated 31.01.1983 and the impugned notices are hereby quashed.
- c) The above quashing of the declaration shall remain in abeyance up to 31.05.2025.
- d) The Central Government would be at liberty to publish a fresh declaration under Section 3 of the 1903 Act within the above time whereafter such fresh declaration shall come into force from the date of its publication.

- e) No action would be taken by the respondents in the meantime on the basis of the notification dated 31.01.1983 under section 3 of the 1903 Act.
- f) Appellants shall not raise any further constructions in the meantime till fresh notification is issued.
- g) The respondents shall proceed strictly in accordance with the scheme of the Act after issuing fresh declaration under section 3 of the 1903 Act.

.....**J.**
[VIKRAM NATH]

.....**J.**
[AHSANUDDIN AMANULLAH]

NEW DELHI
DECEMBER 18, 2024