
(2018) 09 UK CK 0020
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No.80 of 2014

Anil Kumar Maheshwari

APPELLANT

Vs

Union of India & others

RESPONDENT

Date of Decision : 05-09-2018

Acts Referred:

States Reorganisation Act, 1956 — Section 126
Ancient Monuments and Archaeological Sites and Remains Rules, 1959 — Rule 8
Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 2(a),
2(db), 2(dc), 2(g), 2(i), 4, 20F
Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration
of National Importance) Act, 1951 — Section 3

Citation : (2018) 09 UK CK 0020

Hon'ble Judges : Rajiv Sharma, ACJ; Lok Pal Singh, J

Bench : Division Bench

Advocate : Devesh Bishnoi, Rakesh Thapliyal, S.S. Chauhan, P.C. Pethshali

Final Decision : Disposed Of

Judgement

Rajiv Sharma, ACJ.

1. On the oral prayer of the petitioner, the Competent Authority under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (as

amended) is hereby added as respondent no.14.

2. Petitioner is a social worker. He has filed the present petition, in the nature of public interest litigation, against the encroachments made on the

ancient monuments and archaeological sites in Kashipur town. The respondents have not taken any steps to protect and preserve the ancient,

historical and religious places in the town of Kashipur. The petition pertains to the sites of Drona Sagar, Chaiti Temple of Mata Baal Sundari Devi,

Bhagwan Moteshwar Maharaj Temple, Govishana Mount and the ramparts of an

old fort in the town of Kashipur. Govishana Mound is one of 3593

old monuments which is being conserved by the respondent no.3- Archaeological Survey of India (ASI). This site relates back to Mahabharata. The

Drona Sagar is said to be the place where Guru Dronacharya taught the archery to Kauravas and Pandavas. The Drona Sagar, Chaiti Temple of

Mata Baal Sundari Devi and Bhagwan Moteshwar Maharaj Temple are of religious importance. The total area of this site is about 60-70 hectares.

According to the information supplied to the petitioner on 30.12.2013, respondent no.3 has taken in its fold an area of 37.273 hectares for conservation as National Monument/ Heritage.

3. The temples of Lord Shiva (known as Moteshwar Mahadev) and Maata Baal Sundari Devi (known as Chaiti Mandir) are situated in a very close

vicinity of ASI preserved area. The total area of Chaiti Boundary is 12.562 hectares.

4. According to the literature/handbook of ASI, placed on record, the area of Drona Sagar is 600 square feet. The actual area available is 6-7

hectares. Out of this, an area of 3.355 hectares in Khasra Nos.60, 81/2, 84/2 and 83 has been shown recorded in Village Ujjain in the name of â??Ros

Drona Sagarâ??. The remaining land is fragmented and registered in different names in revenue records. Petitioner has placed on record the

revenue map. The area of Drona Sagar Pond is not included in the list of preserved monuments by the ASI.

5. One Society was registered called â??Teerth Drona Sagar Jeernodhar Samiti, Kashipurâ?? under the Societies Registration Act. The Khasra

Numbers which are under the control of respondent no.3 are 391/1, 391/2, 406/1 and 406/2. Out of these 4 Khasra numbers, Khasra Nos.391/1 and

406/1 are recorded as 3 â??Banjar Jhariâ?? of Village Ujjain, Kashipur. Khasra No.406/2 is recorded as â??Boundary Chaiti Melaâ?? in Village

Ujjain, Kashipur. Khasra No.391/2 is recorded in the name of Shiv Prakash of Village Ujjain, Kashipur. Thus, out of the total area of 60-70 hectares in

the area, only 37.273 hectares of land is under the control of the ASI.

6. Petitioner has also taken up the matter qua â??Boundary Chaiti Melaâ?? with respondent nos.3, 4 and 5. He also submitted an application to

respondent no.6 to demarcate the entire area. On 3.12.2013, he submitted a complaint to respondent no.5 regarding the Govishana Mound and

requested to take appropriate action. According to the information supplied to the petitioner, respondent nos.6 and 7 have taken up the matter of encroachment and illegal construction within the prohibited area/regulated area. Certain notices were issued to the persons who either had been found to be encroachers or involved in construction activities in the prohibited area/regulated area. Respondent no.6 has also requested the respondent no.5 to take action against the persons who have encroached upon this prohibited area/regulated area. The Tehsildar has also got the matter enquired from the Lekhpal. Petitioner has placed on record the copy of the report of the enquiry conducted by the Lekhpal as Annexure No.14.

7. It is in these circumstances that the present petition has been filed seeking a direction to the respondent nos.1 to 6 to conduct an enquiry to determine the status of the land as per the revenue records. Petitioner has also prayed to direct the respondent nos.1 to 3 to include the entire area of Drona 4 Sagar into its control along with neighbouring sites. Petitioner has also sought a direction to the respondent no.3 to comply with the provisions of Ancient Monuments and Archaeological Sites & Remains Act, 1958 (hereinafter to be referred as 'the Act') and the Rules framed thereunder. Petitioner has also sought a direction to the respondent nos.2, 4 and 5 to conduct an enquiry as to how the land in the name of different Drona Sagar committees could be transferred in the name of private individuals. He has also prayed that the Heritage Bye-laws may be prepared in respect of prohibited area or regulated area of each protected monument and protected area as per the Second Schedule.

8. Respondent nos.1,3,6 and 7 have filed their counter affidavit. According to the averments made in the counter affidavit, the ancient mound at Kashipur was identified by A. Cunningham with 'kiu-pi-Shawang-na' of Chinese Traveler Hiuen Tsang who visited the area in 634 AD. The excavations conducted by the ASI revealed a major part of massive brick temple constructed in three phases. Ornamental bricks, with cut-work of leaf, flower, lotus, purna-ghata and Kiritti-Mukhas motifs including Gupta Workmanship. The fortified mound of Govishana is one of the largest sites of the region and ancient remains. The relics goes back to the Painted Gray Ware Culture. The preliminary notification for declaring the site as 'national importance' has been published on 31.10.1970. The site is under administrative control of ASI and duly maintained. It has also come in

the counter affidavit that no construction activity is permissible within the prescribed area.

9. The permission for allowing construction activity can be considered by the respondent no.3 subject to certain terms and conditions. It has also come

in the counter affidavit that whenever complaints were received, the Sub-Circle Officer of ASI at Kashipur informed the Circle Office at Dehradun.

The respondent no.3 received a letter on 14.12.2012 of Puran Chandra Harbola against Sri Ajay Sharma. The matter was brought to the notice of the

SDM, Kashipur to take necessary action. It has also come in the counter affidavit that the site is under administrative control of ASI. Regular watch

and ward is being carried out by the deputed staff. The mound was demarcated on the basis of the site plan duly verified and countersigned by the

concerned revenue authorities.

10. Respondent nos.4 and 5 have filed their counter affidavit, wherein, they have admitted that the notice was received by the Collector, Udham Singh

Nagar from the A.S.I. Thereafter, the proper notices were issued to the concerned parties.

11. Respondent nos.8 and 11 have also filed their counter affidavit. According to the averments made in the counter affidavit, the respondent no.8 did

not get the grant-in-aid. The Society in the name of respondent no.11 was registered on 17.1.2014. The primary source of income of Society is from

inviting tenders for Bag Bahar, rent of shops, membership fee etc. The Society was only managing this property for the welfare of public.

12. The Parliament has enacted the Act called "Ancient Monuments and Archaeological Sites and Remains Act, 1958" to preserve the ancient

and historical monuments and archaeological sites and remains of 6 national importance. Section 2(a) defines the "ancient monument". Section

2(db) defines the "competent authority". Section 2(dc) defines construction. Section 2(g) defines "owner".

13. Section 3 prescribes that all ancient and historical monuments and all archaeological sites and remains which have been declared by the Ancient

and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, or by section 126 of the States

Reorganisation Act, 1956, to be of national importance shall be deemed to be ancient and historical monument.

14. Sections 4, 5 and 6 of the Act are reproduced hereinbelow: -

4. Power of Central Government to declare ancient monuments, etc., to be of national importance (1) Where the Central Government is of opinion

that any ancient monument or archaeological site and remains not included in section 3 is of national importance, it may, by notification in the Official

Gazette, give two monthsâ?? notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance;

and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification,

object to the declaration of the monument, or the archaeological site and remains, to be of national importance. 3 Ins. by Antiquities and Art Treasures

Act (52 of 1972), vide Section 33(i), w.e.f. 5.04.1976.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by

notification in the Official Gazette, the ancient monument or the archaeological site and remains, as the case may be, to be of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument

or the archaeological site and remains to which it relates is of national importance for the purposes of this Act.

5. Acquisition of rights in a protected monument (1) The Director General may, with the sanction of the Central Government, purchase, or take a

lease of, or accept a gift or bequest of, any protected monument.

(2) Where a protected monument is without an owner, the Director-General may, by notification in the Official Gazette, assume the guardianship of

the monument. (3) The owner of any protected monument may, by written instrument, constitute the Director-General the guardian of the monument,

and the Director-General may, with the sanction of the Central Government, accept such guardianship.

(4) When the Director-General has accepted the guardianship of a monument under sub-section (3), the owner shall, except as expressly provided in

this Act, have the same estate, right, title and interest in and to the monument as if the Director-General had not been constituted a guardian thereof.

(5) When the Director-General has accepted the guardianship of a monument under sub-section (3), the provisions of this Act relating to agreements executed under section 6 shall apply to the written instrument executed under the said sub-section.

(6) Nothing in this section shall affect the use of any protected monument for customary religious observances. Preservation of protected monument by agreement.

6. Preservation of protected monument by agreement- (1) The Collector, when so directed by the Central Government, shall propose to the owner of a protected monument to enter into an agreement with the Central Government within a specified period for the maintenance of the monument.

(2) An agreement under this section may provide for all or any one of the following matters, namely;â

(a) the maintenance of the monument;

(b) the custody of the monument and the duties of any person who may be employed to watch it;

(c) the restriction of the ownerâ??s rightâ

(i) to use the monument for any purpose,

(ii) to charge any fee for entry into, or inspection of, the monument,

(iii) to destroy, remove, alter or deface the monuments, or

(iv) to build on or near the site of the monument;

(d) The facilities of access to be permitted to the public or any section thereof or to archaeological officers or to persons deputed by the owner or any archaeological officer or the Collector to inspect or maintain the monument;

(e) The notice to be given to the Central Government in case the land on which the monument is situated or any adjoining land is offered for sale by

the owner, and the right to be reserved to the Central Government to purchase such land, or any specified portion of such land, at its market value;

(f) The payment of any expenses incurred by the owner or by the Central Government in connection with the maintenance of the monument;

(g) The proprietary or other rights which are to vest in the Central Government in respect of the monument when any expenses are incurred by the

Central Government in connection with the maintenance of the monument;

(h) The appointment of an authority to decide any dispute arising out of the

agreement; and (i) Any matter connected with the maintenance of the monument, which is a proper subject of agreement between the owner and the Central Government.

(3) The Central Government or the owner may, at any time after the expiration of three years from the date of execution of an agreement under this

section, terminate it on giving six months notice in writing to the other party: Provided that where the agreement is terminated by the owner, he shall

pay to the Central government the expenses, if any, incurred by it on the maintenance of the monument during the five years immediately preceding

the termination of the agreement or, if the agreement has been in force for a shorter period, during the period the agreement was in force.

(4) An agreement under this section shall be binding on any person claiming to be the owner of the monument to which it relates, from, through or

under a party by whom or on whose behalf the agreement was executed.

15. Section 19 lays down the restrictions on enjoyment of property rights in protected areas. "Protected area" has been defined u/s 2(i) of the

Act, which means any archaeological site and remains which is declared to be of national importance by or under the Act.

16. Section 20(D) prescribes the procedure for grant of permission by competent authority within regulated areas. "Regulated area" has been

defined under Section 2(I).

17. The constitution of National Monuments Authority has been defined under Section 20F of the Act.

18. The Central Government has framed the Rules called "The Ancient Monuments and Archaeological Sites and Remains Rules, 1959". Rule 8

prohibits certain acts within monuments. Chapter III deals with the construction and other operations in protected area.

19. The Central Government has also framed the "Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws

and other Functions of the Competent Authority) Rules, 2011. The functions of the competent authority are prescribed under Rule 4. The processing

of applications under various categories is provided under Rule 6. Rule 22(1) lays down that the competent authority shall, in consultation with the

Indian National Trust for Arts and Cultural Heritage prepare heritage bye-laws in respect of the prohibited area or regulated area of each protected

monument and protected area as per the Second Schedule.

20. What emerges, from the facts enumerated hereinabove, is that only 37.273 hectares land is under control of ASI. The remaining area of land is

encroached upon. The State machinery has not taken the effective steps, though the respondent no.3 has brought to the notice of the authority

concerned to evict the persons, who have raised construction on the prohibited area /regulated area. It is the duty cast upon the respondent no.3 and

all the respondents to preserve, conserve and maintain the ancient monuments and ancient sites. The prohibited areas/regulated areas have been

defined under the Act of 1958. The Lekhpal concerned has submitted its report to the Tehsildar, Kashipur. According to this report, large scale

encroachment has been made near the ancient monuments. The report is placed on record as Annexure No.14. The persons who have encroached

upon the land of prohibited area/regulated area should have been evicted. The authorities have only issued the notices to the persons who have

encroached upon the land. The various registered societies could not transfer the land to 10 private individuals. The land around the ancient

monuments belongs to the State Government.

21. The Heritage Bye-laws have not been prepared, for prohibited area or regulated area of each protected monument and protected area, under the

Second Schedule as per the Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and other Functions of the

Competent Authority) Rules in the State of Uttarakhand.

21. It was the duty cast upon the Competent Authority to frame bye-laws in respect of prohibited area or regulated area in consultation with the Indian

National Trust for Arts and Cultural Heritage.

22. The power of Central Government to declare ancient monument of national importance has been defined u/s 4 of the Act of 1958. According to

plain language of Section 4, where the Central Government is of the opinion that any ancient monument or archaeological site and remains not

included in section 3 is of national importance, it may, by notification in the Official Gazette, give two monthsâ?? notice of its intention to declare such

ancient monument or archaeological site and remains to be of national importance. Objections are to be called for within two months. After expiry of

period of two months, the Central Government may, after considering the

objections, if any, received by it, declare by notification in the Official Gazette the ancient monument or the archaeological site and remains, as the case may be, to be of national importance.

23. In the present case, the preliminary notification was issued on 31.10.1970, but despite that, 11 no final notification has been issued by the Central Government.

24. Accordingly, the present petition is disposed of by issuing the following mandatory directions: -

A. The respondent nos.1 to 7 are directed to remove all the encroachments and unauthorized constructions from the prohibited area/regulated area near the ancient monuments and archaeological sites falling in the State of Uttarakhand within a period of three months from today in accordance with law.

B. The Competent Authority under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (as amended), through the Director

General, Archaeological Survey of India is directed to frame Heritage Bye-laws in consultation with the Indian National Trust for Arts and Cultural

Heritage for each protected monument and protected area as per the parameters specified in the Second Schedule in the State of Uttarakhand within

six months from today. The heritage bye-laws shall include use of building material, façade, roofing, pattern, colour, height, built-up area, usage, stilt

parking, underground construction, drainage systems, roads and service infrastructure. The competent authority while preparing the heritage bye-laws

shall place the same before the National Monuments Authority constituted under Section 20F of the Act of 1958.

C. The respondent no.3-Archaeological Survey of India is directed to consider inclusion of entire area of Drona Sagar, Chaiti Temple of Mata Baal

Sundari Devi and Bhagwan Moteshwar Maharaj Temple under its supervision and control.

D. The Central Government is further directed to issue final notification for declaration of Govisana Mound at Kashipur as site for national importance

under Section 4 of the Act of 1958 within two months from today.

25. Pending application, if any, stands disposed of accordingly.