

(2020) 01 DEL CK 0247

In the Delhi High Court

Case No : Letter Patent Appeal No. 22 Of 2020, Civil Miscellaneous No. 1572,
1573 Of 2020

Biji Rajesh

APPELLANT

Vs

Competent Authority & Ors

RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Rules, 1959 — Rule 34
Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 2(dc),
2(k), 2(m), 20A, 20C, 20(dc)

Citation : (2020) 01 DEL CK 0247

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;C. Hari Shankar, J

Bench : Division Bench

Advocate : Jayant Tripathi, Dinesh Dahiya, Garima Prashad

Final Decision : Dismissed

Judgement

D.N. Patel, CJ

CM No. 1573/2020 (exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application is disposed of.

LPA 22/2020

1. This Latter Patent Appeal has been preferred by the original petitioner whose W.P.(C) 6447/2019 was disposed of by the learned Single Judge vide judgment and order dated 11th December, 2019 (Annexure A-1 to the memo of this LPA).

Factual matrix

2. The appellant (original petitioner) filed a writ petition for the reason that nearby the property of respondent nos. 4 and 5, there is a declared ancient monument - Humayun Tomb at Delhi.

3. The property in question in which the repair and renovation is to be carried out is situated at property no. A-11, Nizamuddin East, New Delhi.

4. The aforesaid property of the respondent nos. 4 and 5 which requires renovation or repair, for which even permission has also been granted by the Competent Respondent Authorities under Section 20C of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as the "Act, 1958").

5. The permission for repair/renovation was granted to the respondent nos. 4 and 5 on 13th March, 2018.

6. Being aggrieved and dissatisfied with the aforesaid permission, granted by the Competent Respondent Authorities to respondent nos. 4 and 5, writ petition was preferred by this appellant being W.P.(C) 6447/2019 which was disposed of by the learned Single Judge vide judgment and order dated 11th December, 2019 (Annexure A-1).

7. Being aggrieved and dissatisfied with the aforesaid judgment and order dated 11th December, 2019, this appeal has been preferred by the original petitioner.

Reasons

8. Having heard the appellant in person and learned counsel for the respondents and looking to the facts and circumstances of the case, it appears that the property of the respondent nos. 4 and 5 is situated within the radius of 100 meters from the ancient monument - Humayun Tomb, situated in the city of Delhi.

9. It further appears from the facts of the case that there is existing structure at the place - A-11, Nizamuddin East, New Delhi, belongs to the respondent nos. 4 and 5, which requires repair/renovation.

10. It further appears from the facts of the case that necessary permission was sought by respondent nos. 4 and 5 under Section 20C of the Act of 1958.

11. For the ready reference, Section 20C of the Act, 1958 reads as under :

"20C. Application for repair or renovation in prohibited area, or construction or re-construction or repair or renovation in regulated area.-(1) Any person, who owns any building or structure, which existed in a prohibited area before the 16th day of June, 1992, or, which had been subsequently constructed with the approval of the Director-General and desires to carry out any repair or renovation of such building or structure, may make an application to the competent authority for carrying out such repair or renovation, as the case may be.

(2) Any person, who owns or possesses any building or structure or land in any regulated area, and desires to carry out any construction or re-construction or repair or renovation of such building or structure on such land, as the case may

be, may make an application to the competent authority for carrying out construction or re-construction or repair or renovation, as the case may be."

12. Permission was granted for repair/renovation by respondent nos. 1 and 2 vide their letter/communication dated 13th March, 2018.

13. Much has been argued by the appellant who appears in person for the alleged breach of Section 20A of the Act, 1958 to be read with Section 20(dc) and Section 2(k). The appellant who appears in person submits that under the guise of giving permission for repair/renovation dated 13th march, 2018, in fact the permission given by the respondent authorities is for the reconstruction of the property. The aforesaid contention is not accepted by this court especially looking at the provisions of Section 20A to be read with Section 2(dc) as well as looking at the provisions of Section 2(k) and 2(m) of the Act, 1958. For the ready reference, these sections read as under :

"20A. Declaration of prohibited area and carrying out public work or other works in prohibited area.-

Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument:

Provided that the Central Government may, on the recommendation of the Authority, by notification in the Official Gazette, specify an area more than one hundred metres to be the prohibited area having regard to the classification of any protected monument or protected area, as the case may be, under section 4A.

(2) Save as otherwise provided in section 20C, no person, other than an archaeological officer, shall carry out any construction in any prohibited area.

(3) In a case where the Central Government or the Director-General, as the case may be, is satisfied that-

(a) it is necessary or expedient for carrying out such public work or any project essential to the public; or

(b) such other work or project, in its opinion, shall not have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding, it or he may, notwithstanding anything contained in sub-section (2), in exceptional cases and having regard to the public interest, by order and for reasons to be recorded in writing, permit, such public work or project essential to the public or other constructions, to be carried out in a prohibited area:

Provided that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites

and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a prohibited area in respect of such protected monument, shall be deemed to be the prohibited area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted by the Central Government or the Director-General, as the case may be, for the construction within the prohibited area on the basis of the recommendation of the Expert Advisory Committee, shall be deemed to have been validly granted in accordance with the provisions of this Act, as if this section had been in force at all material times:

Provided further that nothing contained in the first proviso shall apply to any permission granted, subsequent to the completion of construction or re-construction of any building or structure in any prohibited area in pursuance of the notification of the Government of India in the Department of Culture (Archaeological Survey of India) number S.O. 1764, dated the 16th June, 1992 issued under rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, or, without having obtained the recommendations of the Committee constituted in pursuance of the order of the Government of India number 24/22/2006-M, dated the 20th July, 2006 (subsequently referred to as the Expert Advisory Committee in orders dated the 27th August, 2008 and the 5th May, 2009).

(4) No permission, referred to in sub-section (3), including carrying out any public work or project essential to the public or other constructions, shall be granted in any prohibited area on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the assent of the President.

2(dc) "construction" means any erection of a structure or a building, including any addition or extension thereto either vertically or horizontally, but does not include any reconstruction, repair and renovation of an existing structure or building, or, construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences, or, the construction and maintenance of works meant for providing supply of water for public, or, the construction or maintenance, extension, management for supply and distribution of electricity to the public or provision for similar facilities for public;'

2(k) "re-construction" means any erection of a structure or building to its pre-existing structure, having the same horizontal and vertical limits;

2(m) "repair and renovation" means alterations to a pre-existing structure or building, but shall not include construction or re-construction;'. "

(Emphasis supplied)

14. In view of the aforesaid provisions of the Act, 1958; read with the permission sought for by the respondent nos. 4 and 5; and read with the permission granted

by respondent nos. 1 and 2 dated 13th March, 2018, it cannot be said that there is any violation of the provisions of the Act, 1958 by the respondent nos. 1 and 2.

15. Looking to Section 20A of the Act of 1958, what is prohibited under this Section is construction and what is excluded is repair and renovation. In the property in question the repair and renovation is always permitted with the permission of the competent authority under Section 20C of the Act, 1958. In the facts of the present case, the respondent nos. 4 and 5 have sought permission for repair and renovation in the existing building which is situated at property no.A-11, Nizamuddin East, New Delhi.

16. Much has been argued by the appellant in person that the modification of a wall between two rooms in any existing house tantamounts to reconstruction. This argument is not accepted by this court. Such type of work tantamount to repair/renovation, for which the permission was granted by respondent nos. 1 and 2 as stated hereinabove on 13th March, 2018 (at page 78 of the appeal).

17. The aforesaid aspects of the matter have been properly appreciated by the learned Single Judge while disposing of the writ petition preferred by this appellant being W.P.(C) 6447/2019 vide judgment and order dated 11th December, 2019 and we see no reason to take any other view than what was taken by the learned Single Judge.

18. Hence, there is no substance in this LPA and the same is therefore dismissed.

CM No. 1572/2020 (stay)

1. In view of the disposal of the appeal, this application stands disposed of.