
(2012) 12 MP CK 0086

In the Madhya Pradesh High Court

Case No : Writ Petition (PIL) No. 8509 of 2011

Mata Prasad

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 10, 11, 13, 14, 19
Ancient Monuments Preservation Act, 1904 — Section 2(4), 3
States Reorganisation Act, 1956 — Section 126, 3, 4

Citation : (2013) 2 JLJ 108 : (2013) 1 MPHT 212 : (2013) 1 MPJR 182

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Pawan Vijaywargiya, for the Appellant; Sangeeta Pachauri, Govt. Advocate for the Respondent Nos. 1 to 4 and 8/State, Mr. Deepak Khot, Advocate for the Respondent No. 5/Municipal Corporation and Mr. Sangam Jain, Advocate for the Respondent No. 9, for the Respondent

Judgement

S.K. Gangele, J.—The petitioner has filed this Public Interest Litigation for protection of Gwalior Fort, which is an ancient monument. The petitioner is a social worker and he has filed this petition in probono public interest. Gwalior Fort is one of the biggest Fort in India. A postage stamp has been issued by the Indian Postal Service to commemorate the importance of this Fort. The Fort has two parts. The main Fort and the Gujari Mahal and Man Mandir Palace. The first part was built during the early Tomar Rule, while the second part Gujari Mahal and Palace was constructed by Raja Man Singh Tomar in 15th Century for his favourite queen, Mrignayani After Tomar Dynasty, the Fort came under the control of Lodhis Thereafter, it passed into the hands of Mughal and before Independence, it came into the hands of Scindias

2. History of Gwalior Fort has been beautifully described in a publication "Gwalior Today", published by the Publicity Department of the Government of Gwalior in 1940, which is as under--

It is from this period that the story of the foundation of the Fort by Suraj Sen dates A Kachhwaha Rajput Prince, Suraj Sen, is supposed to have been cured of leprosy by the hermit Gwalior, who caused him to drink at the spring near the Suraj Kund, which is still known today. However, it is quite true that Kachhwahas were responsible for building much of the Fort as we know it today, and independently or as feudatories, they ruled until 1129 when that remarkable character Tej Karon was on the throne. He married the princess Maroni and prolonged his honeymoon for a whole year, which action has caused him to be handed down in tradition as the "bridegroom prince". It was inevitable that this should tempt his nephew, a Parihar Rajput, to usurp the throne.

But, we are going ahead of our story. More than a hundred years earlier in 1021 Mahmud of Ghazni had appeared below Gwalior Fort. Though the Kachhwahas had already made it a strong place, they found it more expedient to buy off Mahmud. Consequently, Rajput Rule continued till 1196 when Kutb-ud-Din Aibak took the Fort for Sultan Muhammed Ghor. Fourteen years later, however, the Parihars recovered the Fort again during the rule of Kutb-ud-Din's son and they managed to retain possession until 1232 when Altmash after a siege of 11 months captured the citadel, and to celebrate his victory put 700 prisoners to death before the door of his tent.

This occasion is the first record of the Johar at Gwalior, the Rajput ladies burning themselves to death rather than fall victims to Delhi's Slave King.

But, sacrifices were in vain, the Fort and its territory remained in the hands of the Muslim Kings of Delhi until 1398 when during the confusion caused by the invasion of India by Timur, Virsinghdeo, a Tomar Rajput, made himself master of Gwalior.

The entry of the Tomars heralded the dawn of Gwalior's golden age. Though Central India was by no means entirely at peace, trade and the arts must have flourished considerably under the shelter of the great stronghold of Gwalior. During the reign of Dungarsingha Tomar, one of Virsinghdeo's successors, most of the Jain rock carvings in the Fort were executed. It goes without saying that these must have been carved at the behest of Jain merchant princes and it is equally obvious that there would not be merchant princes in Gwalior were there not a very sound guarantee of security.

Raj Man Singh:

During the century, which followed Virsinghdeo's seizure of the Fort, Gwalior progressed so rapidly that Raja Man Singh, the greatest of the Tomar Rulers, was able to build the magnificent Man Singh Palace and the Gujari Mahal. The latter housed his favourite queen Mrignayani, the foundress of the Gwalior School of Music. This institution rapidly became known all over the country and much later, in the *Ain-i-Akbari* where 36 greater singers and players are listed, 15 of them are recorded as having learnt their art at Gwalior. Among these pupils was Tansen, the greatest singer India has ever known. It is fitting that his tomb

should be in Gwalior within sight of the Palaces, which he once knew so well.

Raja Man Singh was certainly the greatest and very nearly the last of these Rajput Rulers. He died in 1517 and soon afterwards, Ibrahim Lodi of Delhi was in possession. In turn, he had to give way to Babar, the Turkish invader, who was to found the Moghul line. Normally we should regard the Fort as now being in the hands of the Moghuls until the 18th Century when the first Scindia arrived in Central India. That however would not be quite true, because during Humayun's eclipse Sher Shah Suri an Afghan Officer in the former kingdom of Jaunpur, became strong enough to seize Malwa and Mewar. During the following 15 years, Sher Shah and his successors spent a good deal of their time in Gwalior and indeed before the end of this interlude, it had become practically the capital of their dominions.

Though, Babar was the first of the Moghuls, it did not take him long to make his mark on Gwalior. One of his early actions was to order the destruction of the gigantic Jain figures carved on the fort precipices. Owing, however, to the size of the statues his orders were only partly carried out.

It was Akbar, who brought the Suri dynasty to an end in Gwalior and after that the Fort became not only a strong place for the Moghuls, but a political prison. During the next two hundred years a long procession of princes of the Moghul house, feudatory and great nobles passed into the Fort very few to return to the outer world. Mostly, they were men, who were considered by the Emperor to be too dangerous to live at large and too dangerous to execute openly. The isolated top of Gwalior Fort overcame the ruler's difficulty admirably. Once safely up there they were dosed with poust, a decoration of poppy heads in water. This is not an immediate poison, but, continued over a period, causes mental and physical break-up and finally death. Two of the victims of this method were Sulaiman Shikoh and Sipihi Shikoh (Dara's sons) while Aurangzeb's own son, Sultan Muhammad, died in prison here.

3. As per the return filed by Archaeological Survey of India, the following monuments and part of the Fort are under the control of Archaeological Survey of India--

- (1) Badal Mahal or Hindola Gate
- (2) Chaturbhuj Temple
- (3) Ganesh Gate
- (4) Gwalior Alamgiri Gate
- (5) Lakshman Gate
- (6) Mansingh's Palace
- (7) Rock-cut-Jain Colossi
- (8) Rock-cut-Jain Colossi

(9) Sas Bahu Temples

(10) Teli Ka Mandir

(11) Urwai Gate

4. The respondent-State has filed its return and pleaded that the following monuments situate within the Fort are under the control of State of Madhya Pradesh and they are being managed by the State--

(1) Karan Mahal

(2) Vikram Mahal

(3) Shahjahan Mahal

(4) Jahangir Mala

(5) Johar Kund

(6) Chhatri of Raja Bheem Singh

(7) Durg Prakar

(8) Burj and Gujari Mahal

5. Some of the portion of the Fort is under the control of Sikh Community because the Gurudwara named as "Gurudwara Data Bandi Chhod" is situate in the area. Some of the part of the Fort is under the control of Education Society named as "Scindia Education Society". It has been running a school named as "Scindia School" and that portion is being managed by the Society.

6. The petitioner has pleaded in the petition that there are no proper arrangements of security in the Fort. There is no drinking water facility, sanitation facility and proper lighting facility in the Fort area Antisocial elements have been using the area of the Fort for their illegal activities and there is also encroachment over the lands of the Fort There is no proper lighting. It is further pleaded that there are Jain Idols carved out in the stone wall of the Fort in the years 1440 to 1472, however, these idols have not been maintained and looked after properly. The tourists are facing problems in the area and full potential of tourism has not been utilised by the authorities.

7. The State in the return have admitted the fact that some portion of the Fort as mentioned earlier is under the control of State. It is further submitted that after 1.11.2010 entry fee has been levied on the persons who visit the monument. The State Authorities have further stated that the facility of drinking water is available at the entry of the fee counter and sanitation is also provided Light has also been available at certain points and no person can enter the monument after sunset. It is further pleaded that due to scarcity of funds garden has not been developed, however a detailed working plan to develop the garden adjacent to monument has been prepared and request has been made for financial

assistance. Two care takers have also been posted to look after the area, which is under the control of the State Government. It is admitted in the return that there is paucity of employees to look after the monument, hence, some correspondence has been made to provide the security guards and for the aforesaid purpose appropriate tender shall be invited and correspondence has been made to make demarcation and proper survey of the area so that the encroachment could be removed. It is further pleaded that no person is allowed to make any construction within 100 and 200 mtrs. of area of Fort Collector Gwalior has also submitted an affidavit to the effect that the State Government has not received orders in accordance with the Rule 38 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 in regard to removal of encroachment. As soon as the orders are received, appropriate action shall be taken by the District Administration.

8. The Municipal Corporation has also filed the return and pleaded that whenever any request would be received from the State Authority, the Municipal Corporation shall provide appropriate machinery to remove the encroachment.

9. Archaeological Survey of India-respondent No. 9 has filed a separate return. In the aforesaid return, it has been pleaded that it has control of near about 11 monuments as mentioned in the order. However, the lands attached to the monuments have not been transferred by the Local Revenue Authorities to the Archaeological Survey of India in spite of several letters. There is also a circular of the Central Government in this regard, hence the Archaeological Survey of India is not in a position to take effective steps to remove the encroachment of maintain monuments properly. It is further pleaded that the answering respondent has deputed security guards for the security and safety purposes of the monuments. The Archaeological Survey of India has further pleaded that the authority and the officer authorised by the Archaeological Survey of India has passed certain orders against the persons, who have made encroachment over the land of the Fort and some orders were communicated to the District Administration, but no action has been taken by the authorities to remove the encroachment. As per the letters submitted by the respondent No. 9, near about 149 persons have made encroachment over the land of the protected monuments.

10. Parliament has enacted an act named as The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter shall be referred to "the Act of 1958") to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance.

11. Hon"ble Supreme Court in the case of Rajeev Mankotia Vs. Secretary to the President of India and others, has considered the provisions of the Act and held as under--

4. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short, "the Ancient Monuments Act") provides for the preservation of ancient and

historical monuments and archaeological sites and remains of national importance. The Act was enacted to clarify the legal position that the Central Government regulates exclusively ancient monuments etc. of national importance, leaving the field open to the State Legislature to enact the law on the subject, i.e., ancient monuments of State importance Section 2(a) defines ancient monument" to mean any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes-

(Emphasis supplied)

- (i) the remains of an ancient monument,
- (ii) the site of an ancient monument,
- (iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and
- (iv) the means of access to, and convenient inspection of an ancient monument.

5. Section 3 of the Act declares that all ancient and historical monuments and 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 monuments of archaeological sites and remains declared to be of national importance for the purpose of this Act Section 4 empowers the Central Government to declare any ancient monuments or archaeological site and remains not included in Section 3 to be of national importance by giving two months notice of its so declaring. The Ancient Monuments Preservation Act, 1904 provides for the preservation of ancient monuments and objects of archaeological, historical or artistic interest Section 2(1) defines "ancient monument" in the same language as Section 2(a) of the Ancient Monuments Act Section 2(4) defines "maintain and maintenance to include the fencing covering in, repairing restoring and cleaning of protected monument and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto Section 3 deals with protected monuments" and empowers the Central Government by a notification in the Official Gazette, to declare an ancient monument to be a protected monument under the said Act Section 11 enjoins that the Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in Section 4 or which the Government has acquired u/s 10 etc.

6. It would, therefore, be manifest that all ancient and historical monuments and all archaeological sites and remains or any structure erection or monument or any tumulus or plate of interment shall be deemed to be ancient and historical

monument or archaeological sites and remains of national importance and shall be so declared for the purpose of Ancient Monuments Act, if they have existed for a century and in the case of a State monument, of State importance covered by the appropriate State Act. The point of reference to these provisions is that an ancient monument is of historical, cultural or archaeological or sculptural or monolithic or artistic interest existing for a century is of national importance or of State importance. In other words, either of them are required and shall be protected, reserved and maintained as national monuments or State monuments for the basis, which not only gives pride to the people, but also gives us insight into past glory of our structure, culture, sculptural, artistic or archaeological significance, artistic skills and the vision and wisdom of our ancestors, which should be preserved and perpetuated so that our succeeding generations learn the skills of our ancestors and traditions, cultural and civilisation. They would have the advantage to learn the skills of our art, architecture, aesthetic tastes imbibed by the authors of the past and to continue the same tradition, for the posterity Preservation and protection of ancient monuments, is thus, the duty of the Union of India and the State Government concerned in respect of ancient monuments of national importance or those of State importance respectively to protect, preserve and maintain them by preserving or restoring their original conditions.

12. Hon'ble Supreme Court in the case of Rajeev Mankotia (supra), issued the following directions in regard to maintenance of all ancient monuments under the respective acts--

We avail this opportunity to direct the Government of India to maintain all national monuments under the respective Acts referred to above and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour workmanship, craftsmanship and the skills of the Indian architects, artists and masons is continued to be preserved. They are pride of Indians and places of public visit. The tourist visitors should be properly regulated Collections of funds by way of admission/ entrance fee should be conscientiously accounted for and utilised for their upkeep and maintenance under respect regulations/rules Adequate annual budgetary provisions should be provided. In this behalf, it may not be out of place to mention that if one goes to Williamsburg in United States of America, the first settlement of the Britishers therein is preserved as a tourist resort and though it is one in the row, its originality is maintained and busying business activity goes on in an around the area attracting daily hundreds of tourists from all over the world Similar places of interest, though of recent origin, need to be preserved and maintained as manifestation of our cultural heritage of historical evidence Similar efforts should also be made by the Government of India, in particular the Tourism Department, to attract foreign tourist and to give them good account of our past and glory of the people of India as message to other countries and territories Equally all the State Governments would do well vis-a-vis monuments

of State importance, though given power under Entry 12, List II of the Seventh Schedule to the Constitution

13. Section 14 of the Act prescribes that the Central Government shall maintain every monument. The relevant section is as under--

14. Maintenance of certain protected monuments.-- (1) The Central Government shall maintain every monument, which has been acquired u/s 13 or in respect of which any of the rights mentioned in Section 5 have been acquired.

(2) When the Director General has assumed the guardianship of a monument u/s 5, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself and by his agents, subordinates and workmen, for the purpose of inspecting the monument and for the purpose of bringing such material and doing such acts as he may consider necessary or desirable for the maintenance thereof.

14. Section 19 of the Act, 1958 put restrictions on enjoyment of property right in the protected area Section 38 of the Act gives power to the Central Government to make the rules for certain purposes as mentioned in the section. The Act of 1958 was further amended vide another Act named as The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 (hereinafter shall be referred as to "the Act of 2010") Section 2(i)(db) of the Act of 2010 prescribes the Competent Authority and there are prohibited and regulated area and as per the aforesaid Section from a distance of 100 mtr. from all directions of a monument shall be a protected area Section 35A prescribes cast and obligation to survey the prohibited area and regulated area to the Director General. The relevant section is as under--

35-A. Obligation to survey the protected prohibited area and regulated areas.--

(1) The Director General shall, within such time as may be specified by the Central Government, conduct a survey or cause survey to be conducted in respect of all prohibited areas and regulated areas for the purpose of detailed site plans.

(2) A report in respect of such survey referred to in sub-section (1) shall be forwarded to the Central Government and to the Authority.

Section 30 of the Act of 2010 prescribes punishment for construction in prohibited area.

15. Rules have also been framed by the Central Government named as Ancient Monuments and Archaeological Sites and Remains Rules 1959 (hereinafter shall be referred as "the Rules of 1959") Rule 8 of the Rules of 1959 prescribes prohibition of certain acts within monuments Rule 9 of the Rules of 1959 prescribes penalty

16. The Parliament also enacted an Act named as the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National

Importance) Act, 1951 (hereinafter shall be referred to "the Act of 1951") to declare certain ancient and historical monuments and archaeological sites and remains in Part A State and Part B States to be of national importance and to provide for certain matters connected therewith. In the Schedule, the name of Gwalior Fort with following description has been mentioned at S. No. 104 as under--

Gwalior Fort

Chaturbhuj Temple

Mansingh's Palace

Rock cut Jain Colossi

Sas Bahu Temples

Teli Ka Mandir

17. In accordance with Section 3 of the Act of 1951, all ancient and historical monuments and all archaeological sites and remains declared by this Act to be of national importance shall be deemed to be protected monuments and protected areas respectively, within the meaning the Ancient Monuments Preservation Act, 1904. The relevant portion of Section 3 is as under--

3. Application of Act VII of 1904 to ancient monuments, etc., declared to be a of national importance.-- All ancient and historical monuments and all archaeological sites and remains declared by this Act to be of national importance shall be deemed to be protected monuments and protected areas, respectively within the meaning of the Ancient Monuments Preservation Act 1904 and the provisions of this Act shall apply accordingly to the ancient and historical monuments or archaeological sites and remains, as the case may be, and shall be deemed to have so applied at all relevant times

18. There is an Act named as "The Ancient Monuments Preservation Act 1904" (hereinafter shall be referred to as "the Act of 1904") which provides for the preservation of Ancient Monuments and Objects of Archaeological, Historical or Artistic Interest Section 2(4) and (5) of the Act of 1904 defines, maintain and maintenance and "land", which are as under--

(4) maintain and maintenance" include the fencing, covering in repairing restoring and cleansing of a protected monument, and the doing of any act, which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto,

(5) "land includes a revenue-free estates, a revenue-paying estate, and a permanent transferable tenure, whether such an estate or tenure be subject to encumbrances or not,

19. After perusal of the Act of 1904 Act of 1951, Act of 1958, Act of 2010 and Rules of 1959, in our opinion, the State Government and the Archaeological

Survey of India have not performed their statutory duties Archaeological Survey of India-respondent No. 9 has submitted various letters to the Collector in regard to transfer of the land of monuments, which are under the control of Archaeological Survey of India. It has further been mentioned in the letters that the lands be identified and map be prepared and thereafter, the name of Archaeological Survey of India be recorded in the revenue record Copy of the letters written by the Superintendent of Archaeology, dated 3-9-2010, 8-12-2010, 21-1-2011, 27-6-2011 have been filed alongwith the return. The Principal Secretary, Department of Culture also wrote a letter that the lands of protected monuments be transferred to Central Government on priority basis. It was written on 20th March, 2001. In spite of that, the lands have not been transferred. The Archaeological Survey of India has also filed copies of the orders, which have been sent to the Collector in regard to removal of encroachment made over the land of protected monuments. The aforesaid facts shock the conscious of the Court. The State Authorities have acted or rather in acted in callus manner contrary to the statutory duty imposed under the provisions of the aforesaid Act. We have also observed that proper maintenance and care has not been taken by the authorities in regard to maintenance of ancient monuments.

20. Hon''ble Supreme Court in the case of Rajeev Mankotia (supra) has also issued directions as quoted above in the order in regard to providing adequate budgetary provisions. Hon''ble Supreme Court further observed that it is the duty of the Union of India and the State Government concerned in respect of ancient monuments of national importance to protect, preserve and maintain them by preserving or restoring their original conditions. In this view of the matter, in our opinion it would be just and proper to issue following interim directions at this stage--

(i) That the respondent No. 3-Collector shall immediately transfer the land of the protected monument under the control of Archaeological Survey of India to the Archaeological Survey of India and the name of Archaeological Survey of India be recorded in the revenue records.

(ii) That the State Government and Union of India shall provide appropriate funds and budget to protect, preserve and maintain the Gwalior Fort restoring its original condition. The Hon''ble Supreme Court has also observed that adequate annual budget should be provided in this regard.

(iii) The State Government and Union of India shall take effective steps in regard to appointment of security guards or give the security of the Fort, on contract basis for the purpose of security of the monuments.

(iv) That the State Government and the Union of India shall also ensure that the lands, which are under their control be utilised in accordance with the provisions of Act of 1958 and the rules made thereunder and not for any other purposes.

(v) That proper electricity light arrangement shall be made by the State

Government and the Archaeological Survey of India and the drinking water facility be also provided in the area and the respondents shall ensure that the tourists shall be given proper protection Jain idols be also maintained properly and care shall be taken in this regard Looking to the important of the monuments in Gwalior Fort, appropriate fund shall be provided in this regard by the Union of India because as per Section 14 of the Act of 1958, it is the duty of the Union of India to maintain the monuments.

(vi) That the Archaeological Survey of India-respondent No. 9 shall submit a list of persons alongwith the orders passed by the Competent Authority, who have encroached over the lands of monuments within a period of four weeks and the District Administration and the Municipal Corporation shall take effective steps for removal of encroachment within a period of six weeks.

(vii) That the aforesaid directions shall be complied within a period of three months from the date of receipt of certified copy of this order and the compliance report shall be submitted by the State Government, Union of India as well as the Archaeological Survey of India-respondent No. 9 before the registry of this Court.

List the case after eight weeks