

(2010) 10 DEL CK 0268

In the Delhi High Court

Case No : Writ Petition (C) 9886 of 2003

Nahata Traders and Builders Pvt. Ltd.

APPELLANT

Vs

Director General, Archaeological Survey of India and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 19, 19(1), 19(2), 2

Ancient Monuments and Archaeological Sites and Remains Rules, 1959 — Rule 32, 33, 35, 38, 38(1)

Ancient Monuments Preservation Act, 1904 — Section 3(3)

Income Tax Act, 1961 — Section 132

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5(1)

Citation : (2010) 174 DLT 442 : (2010) 120 DRJ 500

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : U.N. Bhachawat, Abhisheik Baid, Syed Hasan Isfahani, V.K. Singh and Jainul Abidi, for the Appellant; Jayant Tripathi, for ASI, Barkha Babbar, for UOI and Ashwani Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The background facts in Writ Petition (Civil) No. 9886 of 2003 filed by Nahata Traders & Builders Pvt. Ltd. ("NTBPL") and Writ Petition (Civil) No. 9887 of 2003 by Nahata Group of Builders & Financiers Pvt. Ltd. ("NGBFPL") are more or less similar. The questions for determination in both writ petitions are also based on a common set of facts. Accordingly, these two writ petitions are disposed of by this common judgment.

Background facts in W.P. (C) No. 9886 of 2003

2. The relevant facts are that way back in 1982, NTBPL the Petitioner in Writ Petition (Civil) No. 9886 of 2007 purchased land comprised in khasra No. 564/87 situated in Village Kotla Mubarakpur, New Delhi (hereinafter referred as the "property in question") by way of five sale deeds dated 2nd June 1984. It is

stated that the property in question was given Municipal No. D-46A. It is stated that after being put into possession of the property in question, NTBPL got the occupants vacated on payment of some compensation and raised a boundary wall. On 20th September 1984, the name of NTBPL was mutated in the records of the Municipal Corporation of Delhi ("MCD") and also in the revenue records. It is stated that after demolition of the construction raised by the encroachers, there were 7 rooms, 2 bathrooms, one kitchen and 3 toilets left untouched for the use of the NTBPL and for occupation of the caretaker. It is stated that NTBPL also obtained telephone, water and electricity connections in the property. One room was in the occupation of Mr. Hans Raj Malhotra, the caretaker of the NTBPL.

3. It is stated that there are two ancient monuments in the vicinity of the property in question. One is on the northern side known as Chhote Khan and the other on the southern side known as Bhure Khan. On 22nd October 1984, proceedings were initiated by the Income Tax Department in relation to the purchase of the property in question on the ground that transaction was undervalued. Subsequently, these proceedings were dropped. On 23rd February 1988, certain search and seizure operations u/s 132 of the Income Tax Act, 1961 were undertaken in the property in question. Thereafter on being satisfied, the Income Tax Department released the books of accounts and other documents seized and dropped further proceedings.

4. In the year 1991, NTBPL filed a suit for permanent injunction against one Mr. K.Y. Yelliah seeking to restrain him from interfering with the Petitioner's possession, inter alia, of the property in question. A Local Commissioner (LC) was appointed by the civil court to inspect the property in question and submit a report. An interim stay was granted to the Petitioner. The suit for permanent injunction was ultimately decreed on 30th May 1998.

5. Meanwhile, in August 1996, the Director of NTBPL Shri Lalit Kumar Nahata received an order dated 7th August 1996 addressed in his personal name u/s 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("PP" Act) alleging that the Director was in unauthorised occupation of the Government land in khasra Nos. 563/87 and 564/87 and required him to vacate the premises forthwith. On 14th February 1997, an appeal was filed by Mr. Nahata, the Director of NTBPL, which was allowed by the District Judge and the impugned order dated 7th August 1996 directing eviction of the NTBPL was quashed.

6. On 1st April 1997, a fresh show cause notice was issued under the PP Act in the name of Director of NTBPL Mr. Nahata, wherein it was alleged that he had encroached upon a piece of the land belonging to the Archaeological Survey of India ("ASI") which was attached to Chhote Khan, Bade Khan and Bhure Khan in khasra Nos. 563/87 and 564/1987. These notices were contested by filing a detailed reply. It was pointed out that the lands in question belonged to two other companies and the notice in the name of the addressee was bad in law.

7. It is stated that on 16th August 2003, officials of Indian Tourism Development

Corporation ("ITDC") armed with cameras along with a group of workers tried to enter into the property in question. The NTBPL is stated to have reported the matter to the police. On 26th September 2003 a notice dated 24th September 2003 addressed to M/s Nahata Group of Traders ("NGT") was received by an employee of NGT which was purportedly in "suppression to all preceding notices issued by the ASI." On 1st October 2003, NGT sent a reply stating that it has no relation to the property in question.

8. It is stated that on 23rd December 2003 at about 3.00 pm, 10-11 persons led by the Deputy Superintendent, ASI and two other officials accompanied by about 50 labourers and the local police came to the property in question and started demolition of the boundary wall and the rooms. Despite a demand being made in this regard, no order for demolition was produced by the ASI officials. The entire boundary wall was pulled down along with the old rooms in occupation of the NTBPL. A police complaint is stated to have been lodged by the NTBPL with the local police about the said incident.

9. After the ASI refused to permit the Petitioner NTBPL on the basis of which the demolition had purportedly taken place, W.P (C) No. 9886 of 2003 was filed on 29th December 2003. By an interim order dated 12th May 2004 passed by this Court, it was directed that "any action taken by the Respondents of merging the land which is alleged to be that of the Petitioner shall be subject to the final outcome of the writ petition and at the risk and cost of the Respondents." It was further directed that the Respondents would not claim any special equity in case subsequently any structure is directed to be removed. Records were later directed to be produced and inspected by the Petitioner as well.

Background facts in W.P. (C) No. 9887 of 2003

10. Writ Petition (Civil) No. 9887 of 2003 filed by NGBFPL concerns the property situated in khasra No. 86 admeasuring 1 bigha and 19 biswas which was purchased by NGBFPL by virtue of four sale deeds. The property in question has been given Municipal No. D-46 B in the municipal records. In the property in question, there were 8 shops, 38 rooms, 16 huts, 4 toilets and 4 bathrooms. It is stated that the property in question i.e. D-46B was in occupation of 55 tenants who were paid compensation by NGBFPL for getting them vacated. It is stated that immediately thereafter NGBFPL got a boundary wall constructed to protect the property in question from encroachers. Upon an application made by the NGBFPL, the property was mutated in the name of NGBFPL in the MCD records. One room of the property was in the occupation of the caretaker Mr. Kewal Yadav. It is stated that on the northern side of the property at No. D-46B, there are two ancient monuments known as Chhote Khan and Bhure Khan. It is stated that in a search and seizure operation u/s 132 of the Income Tax Act, 1961 the books of accounts of NGBFPL were seized and later released by the Commissioner of Income Tax (Central)-1, New Delhi by an order dated 3rd May 1989, after having accepted as guarantee the pledge of the property in question. The said order is stated to be continuing.

11. On 15th September 2002, a notice dated 13th September 2002 was received by NGBFPL under Rule 38 of the AMASR Rules alleging that NGBFPL was carrying on unauthorised construction within prohibited limits of a centrally protected monument Chhote Khan in contravention of Rule 33 of the AMASR Rules. The NGBFPL replied to the notice denying that any unauthorised construction was being carried on. It was further pointed out that the new construction of a 3-storeyed building was being carried out in the vicinity of the property in question belonging to NGBFPL.

12. Thereafter on 2nd August 2003 another notice dated 29th July 2003 was received by NGBFPL from the ASI under Rule 38 of the AMASR Rules which was stated to have superseded all the previous notices issued by the ASI. In reply to this notice, it was stated that the unauthorised constructions were related to M/s CMS Computers Limited and the Sanathan Dharam Sabha Satyanarain Temple, both of which were outside the boundary wall of the land of NGBFPL. On 16th August 2003, a group of ASI officials and workers from the office of the ITDC were stated to have come with cameras and tried to enter into the property in question belonging to NGBFPL. No order authorising such demolition was produced by the officials. A complaint was accordingly lodged with the police. On 26th September 2003, a notice dated 24th September 2003 addressed to NGT was received by Mr. Jayanti Lal Yadav, an employee of NGT on its behalf. It is stated that NGT is a different entity from NGBFPL and NTBPL. NGT is stated to have no interest, title or right in the property in question of khasra No. 86 which is exclusively owned by NGBFPL. The notice dated 24th September 2003 mentioned that it superseded all previous notices issued by ASI.

13. The NGT replied to the notice dated 24th September 2003 stating that it did not own the property in question at khasra No. 86. It is stated that on 23rd December 2003 at about 3.00 pm, 10-11 persons led by the Deputy Superintendent, ASI and two other officials accompanied by about 50 labourers and the local police from Police Station Kotla Mubarakpur came to the plot at D-46 B and started demolition of the boundary wall and the rooms. The order authorising demolition was not produced despite demands. It is stated that the entire demolition proceedings were recorded on video by the NGBFPL and a complaint was also lodged with the Police. Inspection of the files was also not permitted to the NGBFPL.

14. It is in these circumstances that Writ Petition (C) No. 9887 of 2003 was filed by NGBFPL in this Court on 30th December 2003. By an interim order dated 12th May 2004 passed by this Court, it was directed that "any action taken by the Respondents of merging the land which is alleged to be that of the Petitioner shall be subject to the final outcome of the writ petition and at the risk and cost of the Respondents." It was further directed that the Respondents would not claim any special equity in case subsequently any structure was directed to be removed.

Reply by the ASI

15. A counteraffidavit has been filed by the ASI in Writ Petition (Civil) No. 9887 of 2003 only. However, it has dealt with the facts of both the writ petitions. It is stated that the three monuments Chhote Khan, Bade Khan and Bhure Khan were built as a group of three monuments and are located inside a fully developed, regularised, urbanised and well-planned colony, known as New Delhi South Extension Part-I (NDSE-I) and that their protected limits are enveloped by Blocks C and D of NDSE-I. It is stated that Bade Khan and Chhote Khan were declared as protected monuments by a Notification dated 25th March 1918 even under the Ancient Monuments Preservation Act, 1904 (AMP Act, 1904). By a Notification dated 11th November 1926 issued u/s 3(3) of the AMP Act 1904, the tomb of Bhure Khan was also declared as a protected monument. It is stated that land measuring 5 bighas and 17 biswas in khasra No. 564/87 in Village Kotla Mubarakpur formed part of the protected limits of the protected monuments of Bade Khan and Chhote Khan, while land admeasuring 1 bigha and 7 biswas in khasra No. 563/87 of Kotla Mubarakpur formed part of the protected limits of the protected monument of Bhure Khan. After the enactment of AMASR Act, 1958 a Notification dated 16th June 1992 was issued under Rule 32 of the AMASR Rules declaring that the areas falling within a 100 metre radius from the peripheries of protected monuments as "prohibited areas" and further declaring the area up to the extent of 200 metres as a "regulated area." It is stated that the expressions "regulated area" and "prohibited area" were different from the expression "protected area". u/s 2(i) of the AMASR Act, 1958 "protected area" is an area which means "any archaeological site and remains which is declared to be of national importance by or under" the AMASR Act, 1958. It is accordingly submitted that whenever a notification is gazetted notifying a particular monument as a protected monument, the area shown in the notification as the location of the protected monument ipso facto becomes a protected area.

16. It is sought to be contended that such portion of the land adjoining the site of an ancient monument as may be required for fencing area covering such monument is an integral part of the ancient monument itself. Consequently, it is suggested that the relevant khasra Nos. 563/87 and 564/87 became "protected areas".

17. Further, in the counter affidavit of the ASI, it is stated as under:

20. It is a matter of common knowledge that large area forming part of the revenue estate of Kotla Mubarakpur was purchased by DLF from the villagers and was subsequently developed into the colony known as South Extension Part-I. The said colony was conceived as a plotted colony comprising of plots which were carved out and demarcated with the sanction of Municipal authorities.

18. Thereafter, in para 22 of the counter affidavit it is stated as under:

22. In the municipal records, the area round the monuments in question is not shown as abadi area and rather it is shown as an unoccupied area and green area.

19. It is then stated that since the DLF has left the area in and around the three monuments vacant, the MCD in its records showed the area as a vacant/green area. It is then stated that on 26th July 1996, the Superintending Archaeologist addressed the following letter to the DLF:

6/6/90-M-86

26.7.96

To,

The Managing Director,
D.L.F. Near Jantar Mantar,
Cannaught Place,
New Delhi-110001.

Sir,

I am to inform you that unauthorised constructions are at full swing in the areas falling under Khasra Nos. 84, 85, 86, 113, 563/87 and 564/87 near D-Block, South Extension Part-I. As per our records our protected area also falls in Khasra Nos. 563/87 and 564/87. In the revenue records Khasra Nos. 84,85,86, 113 and 564/87 has been shown in the name of D.L.F.

In view of the complications involved in the demarcation of the areas, you are requested to supply the details of above Khasra Nos. as per your records. A joint inspection may also be made on a mutually suitable date so as to demarcate the area on the ground. You may please fix up a date convenient to you.

Yours faithfully,

Sd/-

Superintending Archaeologist

20. DLF replied to the above letter on 30th July 1996 stating as under:

We have to invite a reference to your letter No. 6/6/90-M-869 dated 26th July 1996 regarding the unauthorised constructions under Khasra Nos. 84, 85, 86, 113, 563/87 and 564/87 near "D" Block, South Extension Part-I. In this connection, we have to state that we have not sold this land to anyone. The land was also not utilised for any construction as there were Archaeological monuments in this area which were left undisturbed. We are, however, ready to assist you in demarcating the area on the ground as desired on a date as may be fixed by you.

21. It appears that for at least six years thereafter no action was taken even according to the ASI. It is sought to be explained that initially proceedings were sought to be commenced under the PP Act but "in view of the lack of legal

knowledge on the part of the ASI officers", they were quashed by the Appellate Court, as has been pleaded by the Petitioner. It is not denied that notice issued on 29th July 2003 was addressed only to NGBFPL regarding unauthorised constructions existing within the prohibited limits of the centrally protected monuments Chhote Khan, Bade Khan and Bhure Khan. The reply of the NGBFPL is also acknowledged. However, from the reply it is sought to be inferred that the NGBFPL had admitted itself to be the occupier of the land "within the protected and prohibited area of the monuments in question"; admitted "certain construction on the land, albeit, denying that any new construction had taken place in the recent past"; and pointed out that there was "unauthorised construction adjacent to the land occupied by the NGBFPL." Then again it is admitted that thereafter till 27th March 2003 no steps were taken by the ASI.

22. The ASI acknowledged the receipt of the reply dated 1st October 2003 from NGBFPL but an inference was drawn that the reply of the Petitioner was attempted to "sidetrack the real issue by taking hyper technical pleas, despite comprehending and appreciating the contents of the notice fully well." It is stated that since the NGBFPL did not submit any document which they were relying upon, "the encroachments of the Petitioners were eventually cleared by the ASI with the help of local administration, pursuant to the order dated 19th December 2003 passed by Superintending Archaeologist (Delhi Circle)." A copy of the above letter dated 19th December 2003 shows that it was addressed to NGBFPL and states that the Municipal records did not contain any plot by the number of D -46A or D-46B in NDSE-I. It was further stated that no sanctioned plan for the construction which exists at the site was produced. It was, therefore, concluded that NGBFPL was found violating the provisions of the AMASR Act, 1958 and AMASR Rules, 1959 and the Notification dated 16th June 1992. The operative portion of the said order reads as under:

As such M/s Nahata Group of Builders & Finance (Pvt.) Ltd is directed to remove all unauthorised constructions within 48 hours from the date of issue of this order so that area can immediately be landscaped as green for the preservation and maintenance of the monument in question.

23. The counter affidavit of the ASI then proceeded to analyse the documents and concluded as under:

...the entire claim of the petitioners is based on the sale deed executed by the so-called erstwhile owners of the land. Therefore, if it is established that the so-called vendors of the sale deeds had no right, title or interest to execute the same, the entire claim of the petitioners is bound to be rendered as fundamentally flawed and inherently misconceived.

As far as the sale deeds are concerned, only the sale deed in respect of khasra No. 564 of 87 has been discussed by the ASI.

Submissions of counsel

24. Mr. U.N. Bhachawat, learned Senior counsel appearing for the Petitioner submitted that as far as Writ Petition (Civil) No. 9886 of 2003 is concerned, no notice whatsoever was given by the ASI or any other authority to the NTBPL prior to the demolition of its property and the consequential dispossession. It is pointed out that a notice, if at all, was given only to NGBFPL, the Petitioner in W.P. (C) 9887 of 2003. NTBPL and NGBFPL are two separate entities and notice to the latter could not be construed as a notice to the former. The prior notice of the proposed demolition was mandatory u/s 19 of the Ancient Monuments & Archaeological Sites & Remains Act, 1958 ("AMASR" Act). It is submitted that on this short ground, Writ Petition (Civil) No. 9886 of 2003 ought to be allowed and the Petitioner should be put back in possession of the land comprised in khasra No. 564/87 in village Kotla Mubarakpur.

25. As regards Writ Petition (Civil) No. 9887 of 2003, the submissions of Mr. Bhachawat were that the action of the ASI for demolition of the construction of the property in question i.e. D-46 B was entirely without the authority of law. He pointed out that Section 19 of the AMASR Act only talks of "restrictions on enjoyment of property rights in protected areas." Section 19(1) states that no person, including the owner or occupier of a protected area, can construct any building within the protected area "without the permission of the Central Government." u/s 19(2), it is the Central Government which has the power to direct that any building constructed within a protected area in contravention of Section 19(1) "shall be removed with a specified period." If the said order is not complied with, then "the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal." It is submitted that it is only the Central Government which can pass any order for demolition u/s 19 of the AMASR Act and this power has not been delegated to any other authority, including the ASI. It is then submitted that in the instant case, no such order of the Central Government has been produced.

26. It is next submitted that under Rule 38(1) of the AMASR Rules, the Central Government has to form an opinion before passing an order that any building or part thereof has been constructed in the prohibited area or in a regulated area in contravention of any of the conditions of a licence granted under Rule 35 of the AMASR Rules and such order will have to direct such owner or occupier of the building to remove such building or part thereof within the period specified therein. Without prejudice to the above submission, it is submitted that the said Rule does not apply to the Petitioner since it is not the licensee within the meaning of Rule 35 of the AMASR Rules. It is also submitted that u/s 19(2) of the AMASR Act, no order has been passed by the Central Government. However, under Rule 38(2) the Central Government has been empowered to direct the District Magistrate to cause the building or part thereof to be removed, if the owner or occupier refuses or fails to comply with an order made under Rule 38(1). It is submitted that no direction was given to the District Magistrate in the instant case. The power to order for removal, in any event, has to first be passed by the Central Government. The Central Government cannot delegate such

power to the ASI. It also cannot delegate the power to remove any part of the building to the ASI.

27. Mr. Bhachawat pointed out that by a Notification No. 50 dated 16th June 1992 published in the Gazette of India on 4th July 1992 the prohibited area up to 100 metres from the protected monuments and the regulated area up to 200 meters therefrom were notified. The monuments so notified included Bade Khan, Chhote Khan and Bhure Khan. It is submitted that these monuments are not situated either in Khasra No. 564/87 (D-46A) or Khasra No. 86 (D-46B). The constructions in both sites as well as property in question existed long before 16th June 1992 i.e. the date of notification. The notification operated prospectively and was intended to prohibit constructions raised thereafter in the vicinity of the protected monuments. The total area of khasra No. 564 of 87 is 3400 sq. yards and out of this NTBPL had purchased 1450 sq. yards in 1984 itself. As regards khasra No. 86, its total area was 30200 sq. yards and NGBFPL had purchased 1950 sq. yards by four sale deeds dated 14th August 1984. Again it is stated that the construction raised in the property in question predated the date on which the area was notified as a prohibited and regulated area.

28. Mr. Jayant Tripathi, learned Counsel appearing for ASI submitted that only some portion of the entire records of the case were traceable. It may be mentioned that this Court granted adjournments to enable the ASI to produce the records despite which ultimately only a part of the record could be traced out by the ASI. It was submitted by Mr. Tripathi that Section 19 of the AMASR Act did not apply since it only talks of "protected area" whereas the alleged unauthorised constructions were in a "regulated area". Accordingly, the demolition was undertaken in accordance with Rule 38 of the AMASR Rules. It is then submitted that even if the demolition and taking over of the possession of the property in question is held to be unauthorised, possession thereof cannot be restored to the Petitioner since the property in question belongs to DLF. It is submitted that the construction was only of three rooms and not more as submitted by the Petitioners.

Statutory Provisions

29. The above submissions have been considered by this Court. Section 19 of the AMASR Act reads as under:

19. Restrictions on enjoyment of property rights in protected areas

(1) No person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining quarrying, excavating, blasting or any operation of a like nature in such area, or utilise such area or any part thereof in any other manner without the permission of the Central Government:

Provided that nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for purposes of cultivation if such cultivation does

not involve the digging of not more than one foot of soil from the surface.

(2) The Central Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of Sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal.

30. Rule 38 of the AMASR Rules, which is also relevant for the purpose of the present cases, reads thus:

38. Removal of unauthorised buildings

(1) The Central Government may, by order, direct the owner or occupier of an authorised building in a prohibited area or in a regulated area or of a building of part thereof which has been constructed in contravention of any of the conditions of a licence granted under Rule 35 to remove such building or part thereof within a period specified in that order.

(2) If the owner or occupier refuses or fails to comply with an order made under Sub-rule (1), the Central Government may direct the District Magistrate to cause the building or part thereof to be removed, and the owner or occupier shall be liable to pay the cost of such removal.

31. Section 19(1) AMASR Act does not impose a total prohibition on any construction activity within a "protected area" but makes every such activity subject to the "permission of the Central Government. Section 19(2) AMASR Act authorises the Central Government alone to exercise the powers to remove unauthorised constructions carried on in contravention of Section 19(1). No such powers of the Central Government have been delegated to the ASI either under the AMASR Act or AMASR Rules. It is a two-step process. First the Central Government has to form an opinion that construction has taken place in the protected area without permission or contrary to the terms and conditions of the permission granted by the Central government. Further, in relation to the Notification dated 16th June 1992, the Central Government will have to satisfy itself if such construction in a prohibited or regulated area took place after the issuance of such notification. In the next step, the Central Government will u/s 19(2) give a direction to the owner or occupier to remove, within a specified period of time, the unauthorised portion of construction. Where there is a failure to carry out any direction issued by the Central Government for time-bound removal of unauthorised construction u/s 19(2), then power has been entrusted to the Collector to remove the authorized construction. Therefore, even for removal of unauthorised constructions in terms of Section 19(1) read with Section 19(2) AMASR Act, the ASI has not been entrusted any powers by the legislature. This position is reflected in Rule 38 AMASR Rules as well.

32. Under Rule 38(1) of the AMASR Rules, it is again the Central Government which has to form an opinion whether the construction found within the

prohibited or regulated area is an unauthorised one, i.e. it has been constructed in contravention of any of the conditions of a licence granted under Rule 35. This, therefore, envisages that prior to commencement of construction, the owner or occupier applied for and was granted licence by the Director General ASI to raise construction subject to certain conditions and that the said conditions were violated. If the owner or occupier fails to comply with the direction issued by the Central Government under Rule 38(1) AMASR rules, then under Rule 38(2) the Central Government can direct the District Magistrate to remove the unauthorised construction, at the cost of the owner or occupier as the case may be. Here again, no role is envisaged for the ASI as such.

Findings

33. On a careful examination of the facts and the applicable law in the instant case, the position that emerges is:

(i) The present petitions are concerned with the properties in khasra No. 564 of 87 and khasra No. 86. The property in khasra No. 86 is to an extent of 30200 sq. yards out of which NGBFPL purchased 1950 sq. yards by four registered sale deeds dated 14th August 1984. The ASI has not dealt with any of the said sale deeds in its reply.

(ii) It was also clear that prohibited and regulated area are in terms of the Notification dated 16th June 1992 comprised in khasra Nos. 563 of 87 and 564 of 87 and not khasra No. 86 at all. Therefore, there appears to be no answer to the contention of NGBFPL as regards khasra No. 86; there is nothing to show that the said land is located within a protected area as envisaged in Section 19 of the AMASR Act.

(iii) NGBFPL, which claims to have purchased the land in khasra No. 86, is a separate entity and NTBPL is another separate entity. NTBPL had purchased 1450 sq. yards in Khasra No. 564 of 87 through five registered sale deeds dated 2nd June 1984.

(iv) No prior notice of demolition was issued to NTBPL at any point in time. Clearly, the notice was issued only to NGBFPL and even the order dated 19th December 2003 was passed by the Superintending Archaeologist in relation to NGBFPL alone. Consequently, as far as NTBPL is concerned and its property in khasra No. 564 of 87, there was no prior show cause notice or any opportunity of being heard as envisaged in Section 19 of the AMASR Act. On this short ground, Writ Petition (Civil) No. 9886 of 2003 should succeed since the entire action of entering upon the property, demolishing the constructions thereon and forcibly taking over possession thereof is without the authority of law.

(v) The ASI has not produced any order of the Central Government either in relation to the property in khasra No. 564 of 87 or khasra No. 86 concluding that the constructions in either property is unauthorised or in contravention of Section 19(1) of the AMASR Act. Inasmuch as the powers u/s 19(1) cannot be exercised

by the ASI but only by the Central Government, the ASI's action of demolishing the construction on the properties in either khasra Nos. 564/87 or 86 and the action of taking over forcible possession thereof is without the authority of law.

(vi) There is no order passed by the Central Government reflecting the formation of any such opinion in the present cases. Since this is the foundational basis for the exercise of the powers under Rule 38(1) of the AMASR Rules and no such order is shown to have been passed, there could be no action taken to demolish the construction in either khasra number, much less by the ASI.

34. In view of the above discussion, this Court does not find it necessary to examine whether Rule 38 of the AMASR Rules is ultra vires Section 19 of the AMASR Act. Inasmuch as Section 19(1) only talks of "protected area", as defined u/s 2(i) of the AMASR Act, Rule 38 expands its scope to include both "prohibited" and "regulated" area. Under Rule 38, it is only the Central Government which has been empowered to form an opinion about any construction thereon being unauthorised and to further direct consequential steps to remove such unauthorised construction. Since this is an essential condition and has not been satisfied, the entire action of the ASI stands vitiated in law and, therefore, the writ petitions can be allowed on this ground also.

35. The ASI's assertion that the DLF is the owner of the property in question is based on the reply it received from the DLF way back in 1996 to the effect that DLF had not sold the land in the different khasra numbers to anyone else. This is however negated by the registered sale deeds produced by the Petitioners NTBPL and NGBFPL to demonstrate that they validly purchased the properties in question at Khasra Nos. 564/87 and 86. The said sale deeds have not been declared to be null and void. In any event, that is a matter for a Civil Court as and when a challenge is raised to their validity. The ASI cannot unilaterally decide that the sale deeds are not to be acted upon. In any event, the letter dated 26th July 1996 addressed by the ASI to DLF mentioned several khasra numbers of which only two, 564/87 and 86, were alleged by the ASI to be within a prohibited or regulated area. The reply by the DLF dated 30th July 1996 was not with reference to any particular khasra number. Therefore, this reply by itself is wholly insufficient to enable the ASI to conclude that the sale deeds produced by the Petitioners in relation to both khasra Nos. 564/87 and 86 ought not to be accepted. A registered sale deed cannot be brushed aside in this arbitrary manner.

36. The Petitioners are also right in the contention that nothing has been produced by the ASI to show that construction which stood on both properties in question on 23rd December 2003 were "new constructions" which came up after the Notification No. 50 dated 16th June 1992. It appears that the ASI made no effort to ascertain if the constructions in the properties in question were in fact new constructions which were raised after 16th June 1992. In the absence of such factual determination, it was not open to the ASI to have proceeded to demolish such constructions.

37. The ASI has not produced any document which shows the DLF to be the owner of the property in question. In any event, it is rightly pointed out by the Petitioners, if they were admittedly in possession of the property in question on the date of demolition and forcible eviction, the ASI cannot, after it is demonstrated that ASI's actions were without the authority of law, dispute the Petitioners' entitlement to the restoration of possession of the properties respectively held by them on the date of such demolition. Once the action of the ASI is found to be illegal, then status quo has to be restored and the Petitioners have to be restored possession of the properties respectively held by them irrespective of the fact whether they have a perfect title or right in them. As regards the contention that it is DLF which holds title, the fact remains that DLF was not in possession when the impugned demolition action took place. Moreover, in such event it is for the DLF to seek appropriate remedies available to it in law. The DLF has made no such grievance till date. The ASI cannot possibly be seen to plead the case of the DLF.

Conclusion

38. For the aforementioned reasons, this Court has no hesitation in concluding that the order dated 19th December 2003 passed by Superintending Archaeologist (Delhi Circle) directing NGBFPL to remove all unauthorised constructions in khasra Nos. 86 and 564/87 is entirely without the authority of law, and the said order is hereby set aside. The consequential actions undertaken by the ASI on 23rd December 2003 of entering upon both the said properties in question and demolishing the constructions thereon and forcibly taking over possession thereof are also held to be without the authority of law.

39. The writ petitions are accordingly allowed. A direction is issued to the Respondent ASI to put the respective Petitioners in possession of their respective properties in question within a period of two weeks from today. The ASI will pay each of the Petitioners' 10,000/- as costs within the same period. It will be open to the Petitioners to seek other appropriate remedies for any claim they may have for damages and losses in accordance with law.