

(2017) 04 DEL CK 0036
In the Delhi High Court
Case No : W.P.(C) No. 2731 of 2017

Raj Rewal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-04-2017

Acts Referred:

Citation : (2017) 240 DLT 166

Hon'ble Judges : Sanjeev Sachdeva, J.

Bench : Single Bench

Advocate : Ms. Roma Bhagat, Advocate, for the Petitioner; Sanjay Jain, ASG with Vidur Mohan and Kartik Rai, Advocates, for the Respondents No.1.; P.S. Patwalia, Sr. Advocate with Saket Sikri, Ms. Adwaita Sharma and Archit Upadhyay, Advocates, for the ITPO; Anil Grover with Jitendra Kumar Tripathi, Ms. Kanika Singh and Mishal Vij, Advocates, for the NDMC

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J. (Oral) - CM No. 11841/2017 (exemption)

Exemption is allowed subject to all just exceptions.

WP(C) 2731/2017 & CM No.11840/2017 (directions)

The petitioner, by the present petition, seeks the following reliefs:-

"a) Direct the Respondents to declare Hall of Nations, Halls of Industries and Nehru Pavilion as works of art of national Importance

b) Direct the Respondents to preserve Hall of Nations, Halls of Industries and Nehru Pavilion during the proposed redevelopment of Pragati Maidan;

c) In the alternative, direct the Respondents to set up an expert committee consisting of the various authorities enumerated by the Hon'ble Minister for Commerce and Industry, in her letter dated 20th January 2016 addressed to Mr. Naresh Gujral, MP, to evaluate the national importance of the structures at

Pragati Maidan, namely Hall of Nations, Halls of Industries and Nehru Pavilion

d) Direct the Respondent No. 1 to put the entire process of decision making for demolition of the Hall of Nations complex in the public realm"

2. The petitioner is the Architect of the Hall of Nations, Hall of Industries and Nehru Pavilion at Pragati Maidan, New Delhi. It is contended that the construction of the said buildings commenced in the year 1969 and was completed in 1972.

3. The petitioner questions the decision of the respondent No.3 in seeking to demolish the structures. It is contended that the said structures, of which the petitioner is an architect, are artistic works of national importance and have been elevated to a status wherein they fall within the Berne Convention for the Protection of Literary and Artistic Works of 1886.

4. It is contended that under the Berne Convention, it is the duty of the Government to preserve the national cultural heritage of the country. It is further contended that the Hall of Nation was selected as one of the two Indian structures to be included at an exhibition showcasing the world's most important building of the 20th Century. Various international museums are stated to have portrayed the Hall of Nation as an architectural wonder. It is contended that not only the petitioner but several other individuals have been requesting the Government to protect and preserve the said structures and not to proceed with demolition of the same.

5. Reliance is placed by the learned counsel for the petitioner on the decision of a Coordinate Bench of this Court in *Amar Nath Sehgal v. Union of India*, 2005 (117) DLT 717 to contend that under the Berne Convention as well as the Convention Concerning the Protection of the World Cultural and Natural Heritage, it is the obligation of the respondents to preserve the said building.

6. Mr. Sanjay Jain, Learned ASG appearing on behalf of the respondent - Union of India submits that there is no legal right shown by the petitioner, whereby, the petitioner can seek a mandamus thereby directing the respondent to preserve the said buildings.

7. It is further submitted that the issues being raised by the petitioner were considered by an expert committee constituted under the new Unified Building Bylaws for Delhi 2016 i.e. the Heritage Conservation Committee (hereinafter referred to as the Committee), which committee comprises of experts in the field and the committee has taken a conscious decision to exclude the buildings which are less than two generations old i.e. less than 60 years in age. It is contended that the decision has been taken across the board and not only with respect to the structures which are the subject matter of the present petition.

8. It is further contended that there is nothing unique or of an architectural value in the structures, which are the subject matter of the present petition and it is for the Government to take a call as to whether the buildings are to be preserved

or not and the experts in the field have taken a decision that they do not qualify for protection.

9. Learned ASG further submits that the decision of the Heritage Conservation Committee has not been challenged by the petitioner and in absence of any challenge to the same, the petitioner cannot seek preservation of the buildings which the Heritage Conservation Committee has opined do not qualify to be considered as heritage.

10. Learned senior counsel appearing for the respondent No.3 reiterates the contentions of the learned ASG and, in addition, relies on the decision of the Division Bench of this Court dated 24.02.2016 in WP(C) 1146/2016 titled Indian Institute of Architects & Ors. v. Union of India to contend that the Division Bench had declined to interfere with the proposed action of demolition on the ground that the representations were pending before the Heritage Conservation Committee and till an order was passed by the Conservation Committee directing preservation, no such order could be passed by the Court directing preservation.

11. Learned senior counsel for respondent No.3 further submits that the case of the petitioner is much worse inasmuch as the Heritage Conservation Committee has submitted a report that such buildings do not even qualify to be considered as heritage. He further submits that since the Heritage Conservation Committee has opined that the structures like that the subject matter of the present petition do not qualify to be considered as heritage, no direction or mandamus could be issued to the Government or the respondent No.3 directing them to preserve the said building.

12. The minutes of the 53rd meeting of the Heritage Conservation Committee, held on 02.02.2017, have been produced in Court. The same are taken on record.

13. The issue with regard to Inclusion of Modern Iconic Post- Independence Buildings in the heritage list was considered by the Heritage Conservation Committee under the heading "B. Other matters" at item No.1 in its meeting held on 02.02.2017. The minutes of the meeting of the Heritage Conservation Committee, held on 02.02.2017, inter alia, with regard to issue at hand read as under:-

"B. Other matters:

Item No.1. Recommendations of the Sub-Committee constituted on: Inclusion of Modern Post Independence (1947) iconic Buildings in the Heritage List-Criteria thereof.

In the 49th meeting of HCC held on 2nd May 2016, it was decided to constitute a sub-committee with the mandate to prepare criteria for the inclusion of modern iconic post-independence buildings in the heritage list. The sub-committee has submitted its report on 13th August 2016. This report was discussed in HCC's 53rd meeting held on 2nd February 2017.

2. It was observed that the sub-committee has gone beyond its mandate of preparing criteria for inclusion of modern buildings in the heritage list. The sub-committee has entertained and analyzed the list of 62 buildings received from INTACH and has made recommendations regarding whether they should be considered heritage building along with their grading. Para 1.5 of Annexure-II, referred to in bye-law 7.26 of the United Building Bye Laws for Delhi, 2016 (UBBL) clearly stipulates that the responsibility of preparation of list of heritage sites is that of the local bodies based on the advice of HCC. Further, this para mentions that the list may be supplemented from time to time by the Government. Thus, UBBL clearly identifies the roles of various bodies in preparation of heritage list and HCC has an advisory role only. Therefore, the grading and listing which has been recommended by the subcommittee is beyond their jurisdiction or that of HCC. It is quite clear that HCC can consider any list only for advisory purposes after the same has been referred to them by the local body or the Government.

3. Further, it is not procedurally correct for the sub-committee to consider these 62 buildings whereas they themselves go on to recommend a procedure for preparing such lists. The sub-committee has failed to specify the details of the features/characteristics of individual buildings based on which they have been graded. It is also not stated in the report that the members of the sub-committee have visited and appraised each of these buildings properly. Moreover, the criteria prepared by them was neither approved by HCC, nor by the government/local bodies who are ultimately responsible to approve any new criteria. In view of this only, the sub-committee was tasked to prepare the criteria, which was to be shared with the Government and the local bodies for further action, as may be considered appropriate. Thus the entire recommendations made in Part III of the report of the sub-committee are without any basis, arbitrary and completely ad hoc. Hence, these recommendations are not acceptable.

4. It was also observed that the criteria recommended by the sub-committee in Part 1 of the report appears to be a cut-and-paste job from heritage laws of various local bodies in India and abroad without much application of mind. The criteria are open-ended, vague (e.g. architectural significance criterion 7), overlapping (e.g. historical significance criteria 1 and 2 overlap with the criterion 4), repetitive (e.g. architectural significance criteria 5, 6 and 12) and even meaningless (e.g. architectural significance criterion 10). It is clear that the sub-committee has not deliberated on what could be significant to Delhi in view of various practices being followed across India or abroad, specifically in the context of contemporary buildings. It was noted that nothing specific to Delhi has been recommended. Given the vagueness and the open-ended character of these recommendations, almost any and every building could end up as a heritage building. Hence, such criteria are not acceptable.

5. It was further noted that the sub-committee's recommendation that buildings

should be at least 15 years old for them to be considered as heritage buildings, is completely arbitrary. This recommendation is against the very sense of the word "heritage", which means "valued objects and qualities such as historic buildings and cultural traditions that have been passed down from previous generations" (refer online Oxford dictionary). Even if we consider a time interval of merely two generations as one of the essential conditions for a building to be considered heritage, the minimum time period would be 30×2 , i.e. 60 years. It was pointed out by Member Secretary that when the notifications of the heritage buildings were done in 2009 and 2010 by GNCTD, the list consisted of buildings constructed prior to 1947. Thus, all the buildings notified as heritage buildings were at least 62 years old at the time of notification. In view of the above, it was decided that the buildings to be included in the heritage list should be at least 60 years old.

6. With every passing year, buildings are being constructed in increasing numbers. In view of technological advances, these buildings are likely to last longer as compared to the buildings constructed in the past. Therefore, in order to ensure that only those buildings which truly deserve to be preserved or conserved are identified as heritage buildings, the criteria should be highly selective besides being very objective and transparent.

7. In view of the above, it was decided to reject the report of the sub-committee. It was further decided to form a new sub-committee to prepare objective, transparent and meaningful criteria for inclusion of modern buildings in the heritage list, based on best national and international practices. However, these buildings will have to be at least 60 years old. The criteria so prepared would then be shared with the local bodies and the Government of NCT of Delhi, who are responsible for inviting objections and suggestions from the public and supplementing the list of heritage sites."

(underlining supplied)

14. The Heritage Conservation Committee in its meeting held on 02.02.2017 to consider the recommendations of the sub-Committee, constituted by the Heritage Conservation Committee in its 49th meeting held on 02.05.2016, was of the view that the sub-committee had exceeded the mandate which was only to prepare the criteria for inclusion of modern iconic post independence buildings in the heritage list. It was of the view that the grading and listing, which has been recommended by the sub-Committee was beyond their jurisdiction or that of the Heritage Conservation Committee. The Committee has taken a view that the Committee could consider a list only for advisory purposes after the same has been referred to them by the legal bodies or the Government.

15. The Committee has found that the recommendations of the sub-Committee to consider 62 buildings was not procedurally correct as the sub-Committee had failed to specify the details of the features/characteristics of individual buildings based on which they were graded. The Committee was of the view that the

criteria prepared by the sub-Committee was neither approved by the Committee nor by any government or legal body, which was ultimately responsible to approve any new criteria. The Committee was of the view that the task of the sub-Committee was only to prepare a criteria which was then to be shared between the Government and the legal bodies for further action. But found that the sub-Committee, instead of restricting itself to the said task, recommended certain buildings to be preserved.

16. The Heritage Conservation Committee found the recommendations of the sub-Committee that buildings which were at least 15 years old could be considered as heritage buildings to be arbitrary.

17. The Heritage Conservation Committee has opined that a time interval of nearly two generations is an essential condition for a building to be eligible for being considered as heritage and two generations has been stated to be a period of 60 years i.e. 30 x 2.

18. Reference is also made to the Notification of Heritage Building in the year 2009-2010 by the Govt. of NCT of Delhi, which only comprised of buildings prior to 1947 i.e. buildings, which were at least 62 years old at the time of the Notification. The Committee opined that only the building which is at least 60 years old, would qualify to be considered as a heritage building.

19. It is noticed that the Heritage Conservation Committee comprises of the following individuals:-

"1.14 Composition of Heritage Conservation Committee

The Heritage Conservation Committee shall be appointed by the Government comprising of:

(i)

Special Secretary/Additional Secretary, (Minister of Urban Development)

Chairman

(ii)

Additional Director General (Architecture), CPWD

Member

(iii)

Structural Engineer having experience of ten years in the field and membership of the Institution of Engineers, India Architect having 10 years experience

(a) Urban Designer

(b) Conservation Architect

Member

(iv)

Environmentalist having in-depth knowledge and experience of 10 years of the subject.

Member

(v)

Historian having knowledge of the region & having 10 years experience in the field.

Member

(vi)

Natural historian having 10 years experience in the field.

Member

(vii)

Chief Planner, Town & Country Planning Organisation

Member

(viii)

Chief Town Planner, MCD

Member

(ix)

Commissioner (Plg.), DDA

Member

(x)

Chief Architect, NDMC

Member

(xi)

Representative of DG, Archeological Survey of India

Member

(xii)

Secretary, Delhi Urban Art Commission

Member Secretary

(xiii)

The Committee shall have the power to co-opt up to three additional members who may have related experience

(xiv)

The tenure of the Chairman and Members of other than Government Department/ Local Bodies shall be three years."

20. The Heritage Conservation Committee, as noticed above, comprises of experts in the field.

21. It is an admitted position that this decision of the Heritage Conservation Committee dated 02.02.2017 has not been challenged by the petitioner.

22. Reliance is also placed by the learned counsel for the respondents on the decision dated 01.03.2017, communicated by letter dated 03.03.2017 of the Delhi Urban Art Commission, which reads as under:-

"Decisions:

Concept of the proposal was found acceptable.

Observations:

1. The proposal was submitted directly by the General Manager (Works), India Trade Promotion Organisation (ITPO) for conceptual consideration of the Commission with due certifications.

2. The proposal is for developing integrated Exhibition-cum-Convention Complex for carrying out trade promotion activities on the approx.123.5 acres of land at Pragati Maidan, New Delhi.

3. The proposal comprises of Convention Centre, Exhibition Halls, Hotel with other supporting infrastructure, buildings, services etc.

4. As per the submission received the integrated complex is to be developed after demolition of the existing building structures in the Pragati Maidan Complex in phases. To take care of the Traffic Transportation aspects, the proposal besides other improvements envisages traffic flow through tunnel roads and provides for underground parking facility.

5. The earlier case history of the matter including ongoing Court case in the Hon"ble Delhi High Court WP(C) no. 5271/2016-INTACH v. Heritage Conservations Committee (HCC), Delhi Urban Art Commission & Others was taken note off by the Commission.

6. The proposal received was scrutinized. The concept of the proposal was found acceptable by the Commission."

23. Perusal of the decision of the Delhi Urban Arts Commission dated 01.03.2017, communicated by letter dated 03.03.2017, shows that the proposal submitted by the respondent No.3 has been accepted and the Master/Layout plan

in respect of redevelopment of Integrated Exhibition-cum-Convention Centre i.e. IECC at Pragati Maidan has been accepted. While taking the said decision, the Commission has also taken note of a petition filed by INTACH being WP(C) 5271/2016 titled Indian National Trust for Art and Cultural Heritage (INTACH) v. Heritage Conservation Committee (HCC), Delhi Urban Art Commission & Ors.,. Even this decision of the Delhi Urban Art Commission is not impugned by the petitioner.

24. Reference may also be made to the judgment of the Division Bench of this Court dated 24.02.2016 in Indian Institute of Architects (supra), wherein, the Division Bench had noted that at that point in time the representation that had been sent to Heritage Conservation Committee to declare the subject buildings as heritage buildings was pending and no decision had been taken in that regard by the Committee. The Division Bench noted that on that date the buildings did not enjoy the heritage status as the decision had not been taken by the Heritage Conservation Committee. The Division Bench dismissed the said petition on the ground that mere pendency of the representation to declare the buildings as heritage building could not be the basis to stall the redevelopment of Pragati Maidan complex.

25. It may be noted that now the Heritage Conservation Committee has taken a conscious decision that the only buildings, which are more than 60 years old, would qualify to be considered as a heritage. The buildings, subject matter of the present petition, are admittedly not older than 60 years and thus would not qualify to be considered as a heritage. Since the decision of the Heritage Conservation Committee is not challenged, the view taken by the Heritage Conservation Committee would have to be accepted.

26. It is a settled proposition of law that courts should not endeavour to sit in appeal over decisions of experts. Courts should show deference to recommendations of expert committee, particularly when no malafide is alleged against the expert committee.[1*] In the present case, there is not challenge to the view taken by the Committee comprising of experts.

[1* Basavaiah (Dr.) v. Dr. H.L. Ramesh & Others; (2010) 8 SCC 372]

27. Reliance placed by the learned counsel for the petitioner on the decision in Amarnath Sehgal (supra), in my view, is misplaced. The said decision was rendered in a Civil Suit filed by the plaintiff therein, claiming to be a copyright holder in the work of art i.e. bronze mural Sculpture, which was built on one of the walls of Vigyan Bhawan. The relief claimed in the suit was under Section 57 of the Copyright Act. The Court granted damages and directed return of the remnants of the work to the plaintiff.

28. The present petition is not a Civil Suit seeking enforcement of any rights under section 57 of the Copyright Act but seeks a mandamus to the Respondents to declare the said buildings as a work of art and the preserve the same or in the alternative to set up a committee of experts to look into the said aspect. As

noticed hereinabove, the expert committee has already considered the said aspect and opined that buildings less than 60 years in age do not qualify for even being considered. This decision has not been challenged.

29. It is settled position of law that for a petitioner to seek the writ of mandamus, has to establish the existence of a legal right in him and a corresponding legal duty in the state[2*].

[2* Pramod Kumar v. U.P. Secondary Education Services Commission and Others; (2008) 7 SCC 153]

30. The reliance placed by learned counsel for the Petitioner on the various International Conventions would also not further the case of the petitioner in as much the expert committee i.e. the Heritage Conservation Committee has already examined the issue and has not directed preservation of the said buildings.

31. The Heritage Conservation Committee, which is a Statutory Committee, has taken a conscious decision not to even consider buildings that are less than 60 years in age as heritage and this decision is not assailed. Thus there is no legal right in the petitioner to seek declaration of the subject buildings as heritage and their preservation.

32. In view of the above, I find no merit in the petition.

33. The writ petition is, accordingly, dismissed. There shall be no order as to cost.

34. It is clarified that the dismissal of the writ petition would not come in the way of the petitioner seeking any remedy, if available, under the Copyright Act.

35. Dasti under the signatures of the Court Master.