

(2013) 01 MAD CK 0271

In the Madras High Court

Case No : Writ Petition No. 24964 of 2012

Rajam Chemicals

APPELLANT

Vs

Tamil Nadu Generation and Distribution Corporation Ltd. and
Others

RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:

Ancient Monuments And Archaeological Sites And Remains (amendment And Validation) Act, 2010 — Section 12, 4
Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 19, 39
Ancient Monuments Preservation Act, 1904 — Section 3, 4
Constitution of India, 1950 — Article 14, 49

Citation : (2013) 1 CTC 904 : (2013) WritLR 205

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : M. Ravindran, for Krishna Ravindran, for the Appellant; P. Gunaraj, Advocate for Respondent Nos. 1 to 4, A. Thiagarajan, for V.S. Mannarsamy, Advocate for Respondent No. 5, S.M. Deenadayalan for ASI/Respondent No. 6 and V.M. Velumani, Advocate, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—This Writ Petition has been filed, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to Ka. No. A.E./O&M/Pallavaram/E/Ma. Sar. Pi/No. 72, dated 5.2012, on the file of the Fourth Respondent, quash the same and consequently direct the Respondents to provide 121 Service Connections to the Petitioner's property at Natesan Salai, Perumal Nagar, in Survey No. 67/2, 69/2 & 69/3A1, T.S. No. 4, Block No. 11, Ward C of Zamin Pallavaram Village, Pallavaram Municipality, Tambaram Taluk, Kancheepuram District, without insisting on No Objection Certificate. According to the Petitioner, he is the absolute owner of the above said property, having purchased the same through Two Sale Deeds in the years 1981 & 1982 from Mrs. Palayammal and Mr. V. Duraikannu; all the Revenue records are mutated in the name of the Petitioner; he has decided to construct Apartment complex and

started applying for necessary approvals/permissions from the authorities concerned in the year 2009 and obtained loan from State Bank of India to the tune of Rs. 4,40,00,000/- and started construction of the apartment complex with huge investment; he applied and obtained Planning permission for construction of Ground-Stilt 4 Floors in 4 Blocks and ground and two floors consisting of 116 dwelling units of residential cum department use building vide PPA file No. B2/1271/08, dated 30.10.2009, from CMDA, Chennai and, subsequently, the building permit was also obtained from Pallavaram Municipality vide Approval Ka. No. BL. 669/09/FI, dated 18.11.2009.

2. In the meantime, he has entered into a Joint Venture Agreement, dated 14.10.2007, with M/s. Vasavi Builders, Fifth Respondent herein; he has already registered the undivided share of land from the year 2009 onwards in favour of the respective purchasers of the apartments and, as on date, 88 Sale Deeds have been executed in favour of the allottees/purchasers. On behalf of the allottees/purchasers, he has submitted an Application for three phase electricity connection and service connections for common usage. Since no action was taken by the Respondent-Officials, he was constrained to approach this Court in W.P. No. 25094 of 2011 for a direction to provide service connection to the above said buildings. There was no major deviation. By an order, dated 8.2.2012, the said Writ Petition was disposed of with a direction to approach the Official Respondents to consider the Application without insisting on No Objection Certificate or Completion Certificate from CMDA, the Fifth Respondent therein. Pursuant to the orders of this Court, the Petitioner approached the Fourth Respondent herein and also remitted the necessary sum of Rs. 12,29,290/- towards CC Deposit, Meter Caution Deposit, Development Charge and Cable laying charges for providing 121 Service Connections on 16.4.2012 and the same was received and acknowledged by the Fourth Respondent. The Revenue records and Municipal records have also been mutated in favour of the respective allottees/purchasers and they have also started paying their taxes to the authorities concerned and most of them have also performed Gruhapravesam and are eagerly waiting for service connection so that they can take possession and pressuring the Petitioner to get service connection immediately since the Fifth Respondent has not been able to obtain the necessary connection.

3. In spite of directions of this Court and after receipt of huge sum of Rs. 12,29,290/- towards various deposits for providing 121 service connections and without any conditions thereof, the Fourth Respondent has issued the impugned order Ka. No. A.E./O&M/Pallavaram/E/Ma. Sar. Pi/No. 72, dated -.05.2012, directing the Petitioner to get No Objection Certificate from Archaeological Survey of India (ASI) sine the locality comes under the Notification issued by them in the year 2010. There is no ban for providing Service Connection in respect of the above property as the construction of the said premises was commenced in the year 2009 itself and much prior to the Notification of ASI and has been done in accordance with the Planning Permission given by the authorities concerned in accordance with law. The official Respondents have

provided 360 Residential Service Connections and 78 Commercial Service Connections in the neighbourhood, which also comes within the restricted area of ASI. The Petitioner gave a representation dated 3.9.2012 to the authorities but, till-date, there has been no response. Having accepted the deposits and fee for providing power supply which is a basic amenity entitled by the citizens of this country, the Respondents are estopped from denying Service Connection. The Petitioner and the Fifth Respondent have not violated any of the prescribed guidelines and constructed the entire building as per the approved plan and the same is acknowledged by CMDA. Hence, this Writ Petition for the relief stated supra.

4. Respondents 1 to 3 have filed a Counter Affidavit, stating as under:

4.1. Based on the order of this Court in W.P. No. 25094 of 2011, the Petitioner submitted 121 numbers of Applications seeking Electricity Connection to their respective residential flats with regard to the premises in question and the same have been registered and processed by TANGEDCO/TNEB. Also, based on the sanction of their estimate to provide 121 service connections, the estimate cost, C.C. Deposit, Meter, Caution Deposit and Development Charges amounting to Rs. 12,32,290/- are collected from the Petitioner for execution of works and the works are also taken up and partially finished. In the meanwhile, the Second Respondent received a copy of the Memo No. CE/Comml/EE 3/AEEE1/F.Arch/D. 571/11, dated 21.12.2011 on 12.1.2012 from the Chief Engineer, Commercial with regard to the implementation of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, which is as under:

Memo No. CE/Comml/EE3/AEEE1/F.Arch/D. 571/11, dated 21.12.2011.

Sub: Electricity-Implementation of the Ancient Monuments and Archaeological Sites and Remains (Amendment & Validation) Act, 2010 -Clarification on issue of NOC-Reg.

Ref: Memo No. CE/Comml.EE3/AEE1/F.Misc./D. 438/10, dated 4.7.2010.

....

In the reference cited, all CEs/Distribution and SEs/EDC were instructed to stop all type of construction activities in the prohibited/regulated areas in the centrally protected monuments and not to take up any electrification works/projects in the prohibited/regulated areas as per the list communicated by Archaeological Survey of India, in their jurisdiction.

In continuation to the above, it is hereby instructed that the field officers shall register the Application for Service Connection to those constructions in the prohibited/regulated areas of National Monuments/Sites only on submission of NOC obtained from the following Competent Authority in accordance with the provisions of the Ancient Monument and Archaeological Sites and Remains (Amendment and Validation) Act, 2010

Competent Authority to issue NOC The Principal Secretary and Commissioner, Government of Tamil Nadu, Department of Archaeology, Tamil Valarchi Valaagam, Halls Road, Egmore, Chennai-600 008.

4.2. Inasmuch as the land in question where the above said 121 Service Connections are applied for comes under the Archaeological Survey of India as "Notified Area" which had been confirmed by the Public notice letter No. Na. Ka. Enn. 2860/10/F1, dated 11.8.2010, issued by the Pallavaram Municipality, Chennai-600 043, with regard to the details of the land comes under the purview of Archaeological Survey of India within the jurisdiction of the Pallavaram Municipal Limits and as the above said Survey Nos. 67, 69/2, & 69/3A1 and T.S. No. 4, Block No. 11, Ward C of Zamin Pallavaram Village, Pallavaram Municipality, Tambaram Taluk, Kancheepuram District fall within the notified area, they have insisted by a letter No. AE/O&M/Pallavaram East/F. Doc/No. 72, dated 21.6.2012, on the Petitioner to produce No Objection Certificate (NOC) from the Competent Authority under the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, in short, "the Act" so as to effect electricity supply to the Petitioner. In view of the provisions under the Act, as informed by the Chief Engineer with regard to NOC from the Competent Authority, the impugned order insisting on the Petitioner to produce NOC from the Competent Authority does not suffer from any illegality.

5. Sixth Respondent has also filed a Counter, stating as below:

The land in question falls in the prohibited area of the Centrally Protected Archaeological Site and partly in Prohibited Area and Regulated Area of the Archaeological Site "Megalithic Cists and Cairns". The Applicant may be directed to obtain NOC from the Competent Authority for undertaking construction in accordance with the provisions of the Act. The provisions regulate the construction activity in the Prohibited and Regulated Areas of Centrally Protected Monuments and Sites. As per the Act, for repairs/renovations of existing buildings in the prohibited area of National Monuments and Sites and for undertaking repairs/renovations of existing buildings and construction of new buildings in the regulated area of National Monuments/Sites, prior permission has to be obtained from the Competent Authority. As per the Act, prohibited area means 100 metres on all sides from the boundary of the protected monument/area as the case may be and the regulated area means 200 metres further from the prohibited area on all sides. Accordingly, they prayed for dismissal of the Writ Petition.

6. Learned Senior Counsel for the Petitioner would contend that the Petitioner has constructed the premises strictly adhering to the provisions of CMDA Rules and other statutory bodies by obtaining all necessary Planning and other permissions as early as in the year 2009 itself and, therefore, the impugned order of the Fourth Respondent, making applicable the provisions of the Amendment Act which came into effect from 29.3.2010, and insisting on production of No Objection Certificate from Archaeological Survey of India for

issuing electricity connection, is non est in law.

7. Rebutting the above contention of the learned Senior Counsel for the Petitioner, learned Counsel for the Respondents would contend that the area on which the construction is made by the Petitioner falls within the regulated area of the Archaeological Site "Megalithic Cists and Cairns" and, therefore, No Objection Certificate from the Competent Authority is a must for undertaking construction in accordance with the provisions of the Amendment Act, 2010, and for effecting electricity service connections. The learned Counsel would rely upon the following decisions:

(i) The Indian National Trust for Architectural and Cultural Heritage (INTACH) Vs. The Chennai Metropolitan Development Authority, Thalamuthu Natarajan Maligai, The Corporation of Chennai and Life Insurance Corporation of India, :

19. Sometimes, in an enthusiastic effort "to clean up" a temple or a heritage building, we have seen that the persons who undertake this effort do sand blasting which actually damages the quality of the pillars or the structures as such. Therefore, the Government shall issue rules to prevent persons from undertaking any repair even under the name of renovation of heritage buildings without seeking the necessary approval of the Heritage Conservation Committee whenever an Ancient Monument, whether it is a structure or erection of historic, archaeological or artistic value as described in the Tamil Nadu (25 of 1966). The CMDA must take the recommendation of the Committee for conserving the heritage buildings in the Chennai Metropolitan Area. The Government shall also enact Rules so that such heritage buildings, wherever in the State, shall not be demolished except after obtaining the conditions similar to the ones provided for under the Development Control Rules.

(ii) Archaeological Survey of India and Others Vs. Narender Anand and Another, :

49. In other words, in exercise of power u/s 20-A(3), the Central Government or the Director General cannot pass an order by employing the stock of words and phrases used in that section and permit any construction by a private person dehors public interest. Any other interpretation of this provision would destroy the very object of the 1958 Act and the prohibition contained in the Notification dated 16.6.1992 and sub-section (1) of Section 20-A would become redundant and we do not think that this would be the correct interpretation of the amended provision. It also needs to be emphasised that public interest must be the core factor to be considered by the Central Government or the Director General before allowing any construction and in no case the construction should be allowed if the same adversely affects the ancient and historical monuments or Archaeological Sites.

50. We may now revert to the impugned judgment in these Appeals. In our view, the Archaeological Survey of India is fully justified in making a grievance that the Division Bench of the High Court was not justified in directing the Central Government to review the prohibition contained in the Notification dated

16.6.1992. The High Court's anxiety to maintain a balance between the dire necessity of protecting historical monuments of national and international importance and development of infrastructures is understandable, but it is not possible to approve the fiat issued to the Central Government to review the prohibition contained in the Notification dated 16.6.1992. That Notification was issued by the Central Government for implementing the policy enshrined in Article 49 of the Constitution and the 1958 Act i.e. to preserve and protect ancient and historical monuments and Archaeological Sites and remains of national importance.

51. Section 19 of the 1958 Act contains a restriction against construction of any building within the protected area or carrying out of any mining, quarrying, excavating, blasting or any other operation of similar nature in such area. Rules 31 & 32 of the Rules empower the Central Government to declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction. The Central Government must have issued the Notification dated 16.6.1992 after consulting experts in the field and keeping in view the object of the 1958 Act. Therefore, in the name of development and accommodating the need for multi-storeyed structures, the High Court could not have issued a Mandamus to the Central Government to review/reconsider the Notification dated 16.6.1992 and that too by ignoring that after Independence a large number of Protected Monuments have been facing the threat of extinction and if effective steps are not taken to check the same, these monuments may become part of history.

(iii) Janardan Reddy and Others Vs. The State, :

... It was strenuously urged that this is a wrong approach to the question altogether. Articles of the Constitution have to be construed according to their plain natural meaning and cases of hardship should not be brought to bear on the natural construction. Hard cases should not be permitted to make bad law. In our opinion, this argument of the Attorney-General is sound. The question of hardship cannot be and should not be allowed to affect the true meaning of the words used in the Constitution. It is, therefore, proper to approach the Articles irrespective of considerations of hardship.

(iv) Purbanchal Cables and Conductors Pvt. Ltd. Vs. Assam State Electricity Board and Another,

39. With the commencement of the Act, a new vested right exists with the supplier, that being, if there is delay in payment after the acceptance of the goods by the buyer, the supplier can file a Suit for claiming interest at a higher rate, as prescribed by the Act. This position has been approved by this Court in Modern Industries Vs. Steel Authority of India Ltd. and Others, . If a Suit for interest simpliciter is maintainable as held by this Court in Modern Industries, then a new liability qua the buyer is created with the commencement of the Act giving a vested right to the supplier in case of delayed payment. In other words,

if there is a delayed payment by the buyer, then a right to claim a higher rate of interest as prescribed by the Act accrues to the supplier.

51. There is no doubt about the fact that the Act is a substantive law as vested rights of entitlement to a higher rate of interest in case of delayed payment accrues in favour of the supplier and a corresponding liability is imposed on the buyer. This Court, time and again, has observed that any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a procedural or declaratory law operates retrospectively as there is no vested right in procedure.

52. In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only be said to accrue for sale agreements after the date of commencement of the Act i.e. 23.9.1992 and not any time prior.

8. I have heard the learned Counsel for the parties and also given my thoughtful consideration to the submissions made by them, in addition to going through the authorities cited.

9. It is not in dispute that the Petitioner is the absolute owner of the property at Natesan Salai, Perumal Nagar, in Survey No. 67/2,69/2 & 69/3A1, T.S. No. 4, Block No. 11, Ward C of Zamin Pallavaram Village, Pallavaram Municipality, Tambaram Taluk, Kancheepuram District, having purchased the same through two sale deeds in the years 1981 & 1982 from Mrs. Palayammal and Mr. V. Duraikannu. He obtained necessary approvals/permissions from the authorities concerned in the year 2009 for construction of 116 dwelling units of Multi-storied Apartments vide PPA file No. B2/1271/08, dated 30.10.2009, from CMDA, Chennai, and Pallavaram Municipality vide Approval Ka. No. BL. 669/09/FI, dated 18.11.2009, by availing loan from State Bank of India to the tune of Rs. 4,40,00,000/-. He also registered the undivided share of land from the year 2009 onwards in favour of the respective purchasers of the Apartments. On behalf of the allottees/purchasers, he has submitted an Application for three phase electricity connection and service connections for common usage. The Petitioner also approached the Fourth Respondent herein and remitted the necessary sum of Rs. 12,29,290/- towards CC Deposit, Meter Caution Deposit, Development Charge and Cable laying charges for providing 121 service connections on 16.4.2012 and the same was received and acknowledged by the Fourth Respondent. Even after receipt of huge sum of Rs. 12,29,290/- towards various deposits for providing service connections and without any conditions thereof, the Fourth Respondent has issued the impugned order, directing the Petitioner to get No Objection Certificate from AST

10. In exercise of the powers conferred by sub-section (1) of Section 3 of the

Ancient Monuments Preservation Act, 1904, the Government of India declared the Ancient Monuments situated in Survey No. 56 of Parvettai Malai Poramboke (Kallanguttu) and Survey No. 63 of Chori Malai Poramboke in Chengleput, Saidapet Taluk, V. No. 158 (Old No. 240) Pallavaram Zamindari, as "Megalithic Cairns and Cists" and sites of national importance vide Gazette of India, dated 24.8.1946, in No. F. 39-6/45-G, dated 13.8.1946, after issuing preliminary Notification in No. F. 39-6/45-G, dated 8.11.1945.

11. The Ancient Monuments Preservation Act, 1904, shall cease to have effect in relation to ancient and historical monuments and Archaeological Sites and remains declared by or under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Act 24 of 1958) to be of national importance except as respects things done or omitted to be done before the commencement of this Act., by the Repeals and Savings Section 39. The Act 24 of 1958 was further amended by The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, (Act 10 of 2010), to make provision for validation of certain actions taken by the Central Government under the Act.

12. It is relevant to extract the following provisions:

12.1. Section 20-A:

20-A. 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 prohibited area having regard to the classification of any protected monument or protected area, as the case may be, u/s 4-A.

(2) Save as otherwise provided in Section 20-C, 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 reconstruction 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.

12.2. Section 20-B:

20-B. Declaration of regulated area in respect of every protected monument.-- Every area, beginning at the limit of prohibited area in respect of every Ancient Monument and Archaeological Site and Remains, declared as of national importance under Sections 3 & 4 and extending to a distance of two hundred metres in all directions shall be the regulated area in respect of every Ancient Monument and Archaeological Site and Remains:

Provided that the Central Government may, by Notification in the Official Gazette, specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, u/s 4-A:

Provided further 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 regulated area in respect of such protected monument, shall be deemed to be the regulated area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction in such regulated area 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.

12.3. Section 12:

12. Validation of action taken, etc., under Notification No. S.O. 1764, dated 16th June, 1992.-- Notwithstanding anything contained in any judgment, decree or order of any Court, tribunal or other authority-

(a) any thing done or purported to be done or any action taken or purported to be taken by the Central Government, except as provided in the Second Proviso to sub-section (3) of Section 20-A, immediately before the commencement of this Act, 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, shall be deemed to be and deemed to have always been done or taken validly and in accordance with law at all material times [except as provided in the second proviso to sub-section (3) of Section 20-A] and no action taken or thing done (including any order made, agreement entered into, or Notification issued for constituting any Expert Advisory Committee) in connection with any permission granted or licence issued for any construction in a prohibited area or a regulated area in respect of a protected monument, shall be deemed to be invalid or ever to have become invalid except as provided in the second proviso to sub-section (3) of Section 20-A merely on the ground that the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or the Rules, Orders or Notifications issued thereunder did not contain any provision for constitution of an Expert Advisory Committee or Advisory Committee, as the case may be;

(b) no Suit, claim or other proceedings shall be instituted, maintained or continued in any Court, tribunal or other authority for any permission or licence granted by the Central Government or the Director-General under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any Rule, Order or Notification made thereunder for carrying out any repair, renovation or construction work or for undertaking any public work or public project before the commencement of this Act;

(c) no claim or challenge shall be made in or entertained by any Court, Tribunal or other Authority solely on the ground that the Central Government or the Director General did not take into consideration any of the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), as amended by the Ancient Monuments and Archaeological Sites and

Remains (Amendment and Validation) Act, 2010, in granting any permission or licence for the purpose of carrying out any mining or repair, renovation or construction work in a prohibited area or a regulated area at any time between the 16th day of June, 1992 and the date of commencement of this Act.

12.4. Section 19:

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 subsection (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.

12.5. Section 20-C:

20-C. 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.

13. With the insertion of Section 20-A by Section 4 of the Amendment Act 2010, it has been made clear that 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. Not only this, by virtue of the Proviso to Section 20-A(1), the Central Government has been clothed with the power to extend the prohibition beyond 100 metres by issuing a Notification in the Official Gazette keeping in view the classification of any protected monument or protected area, as the case may be. This amendment was given

effect from 16.6.1992, which is the date of Notification.

14. In terms of Section 20-A(2), no person, other than an Archaeological Officer, can carry out any construction in any prohibited area. Section 20-C is an exception to Section 20-A(2) which lays down that any person who owns any building or structure which existed in a Prohibited Area before 16.6.1992 or had been subsequently constructed with the approval of the Director General may carry out any repair or renovation of such building or structure by making an application to the Competent Authority. The term "renovation" appearing in Section 20-C takes its colour from the word "repair" appearing in that Section. This would mean that in the garb of renovation, the owner of a building cannot demolish the existing structure and raise a new one and the Competent Authority cannot grant permission for such reconstruction.

15. Section 6 of the Amendment Act inserts Section 20-B on and from 16.6.1992 after Section 20-A of the Principal Act, which defines "regulated area" as every area, beginning at the limit of prohibited area in respect of every Ancient Monument and Archaeological Site and Remains, declared as of National Importance under Sections 3 & 4 and extending to a distance of two hundred metres in all directions shall be the regulated area in respect of every Ancient Monument and Archaeological Site and Remains.

16. Keeping the above provisions in mind, if we see the meaning of the term "construction" as defined u/s (dc) of Section 2, it 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 (Emphasis supplied).

17. The meaning of the term "Public", referred to above, as per Oxford Dictionary means, "of, concerning, or open to the people as a whole". It also refers to "ordinary people in general". If the above meanings are adopted to the case on hand, the Petitioner would also come under the meaning of public. Therefore, there cannot be any hesitation as to the applicability of the term "public", used in the Act, to the Petitioner.

18. It is true, in view of the provisions of Sections 20-A & 20-B declaring some areas as prohibited areas and regulated areas, the property in question has fallen in the above category, namely, within the ceiling area of the Prohibited Area and Regulated Area in respect of Centrally Protected Archaeological Site viz., Megalithic Cists and Cairns.

19. The concept of Prohibited and Regulated Areas was introduced by the Government of India in June, 1992, in respect of the Centrally Protected

Monuments and Sites all over India vide S.O. No. 1764, dated 16.6.1992, declaring that areas up to 100 metres from the protected limits and further beyond it up to 200 metres to be Prohibited and Regulated Areas respectively for purposes of both mining operation and construction. The said Regulation is applicable in respect of the protected site at Pallavaram also. Construction activities in the prohibited/regulated areas of Centrally Protected Monuments/Sites have to be undertaken in accordance with the provisions of the Act. These provisions are applicable to all the individuals/agencies/Government Departments and Autonomous Bodies/Companies/Corporations, etc. As per the provisions of the Act, no other person or official is competent to issue NOC for construction activities in the Prohibited/Regulated Areas of National Monuments/Sites except the Competent Authority for Tamil Nadu, as notified by the Government of India. Copies of the said order were also sent to all the District Collectors in Tamil Nadu.

20. Through the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, issued in March, 2010, issued by the Government of India vide Gazette, dated 30.3.2010, the order dated 16.6.1992, has been validated. The Sixth Respondent herein has also sent copies of the said Gazette to all the District Collectors, including the District Collector of Kancheepuram, Chennai Metropolitan Development Authority and Tamil Nadu Electricity Board for implementation of the provisions of the Act with regard to construction and mining activities in the Prohibited and Regulated Areas of Centrally Protected Monuments and Sites, with a request to issue suitable instructions to all the subordinate authorities for implementation of the Ordinance promulgated by the Government of India, which is evident from the typed set. On 29.4.2010, a copy of the said Gazette was also sent to the Commissioner, Pallavaram Municipality, requesting to stop issue of Licenses/Permissions/Approvals for any type of construction activity within the Protected/Prohibited/Regulated Areas of Centrally Protected Monuments/Sites in his jurisdiction. On 9.6.2010, vide letter No. 6/1/2010/M/2660, same copy was forwarded to the Chairman, Tamil Nadu Electricity Board, Chennai. On 30.11.2011, the Sixth Respondent has issued another communication to them stating that construction activities in the Prohibited/Regulated Areas of Centrally Protected Monuments/Sites have to be undertaken in accordance with the provisions of the Act and with regard to issue of NOC, Competent Authority is the Principal Secretary & Commissioner, Government of Tamil Nadu, Chennai-600 008, and that no other person or official or office/agency is competent to issue NOC for construction activities in the Prohibited/Regulated Areas of National Monuments/Sites. On 17.10.2012, a letter to this effect was forwarded to the Director/Distribution, TANGEDCO, Chennai.

21. Any person, who owns or possesses any building or structure or land in any regulated area and desires to carry out any construction or reconstruction on such land, may make an Application to the Competent Authority for carrying out construction or re-construction as the case may be.

22. Section 19 of the 1958 Act contains a restriction against construction of any building within the protected area or carrying out of any mining, quarrying, excavating, blasting or any other operation of similar nature in such area. Rules 31 & 32 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, empower the Central Government to declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction. The Central Government has issued the Notification, dated 16.6.1992 after consulting experts in the field and keeping in view the object of the 1958 Act. Therefore, in the name of development and accommodating the need for multi-storeyed structures, no Mandamus can be issued to the authorities to grant permission for construction of houses in the protected areas, by ignoring that after independence a large number of Protected Monuments have been facing the threat of extinction and if effective steps are not taken to check the same, these monuments shall be vanished.

23. Though the area in question and the buildings constructed thereon come under the purview of the Act and the Notification, it is conspicuous that all the State authorities like Planning Authority, Approving Authority as well as the other authorities with the Respondent-Electricity Board kept the Notification at bay without implementation for over two decades. Further, it is seen that the authorities have given permission to several persons to construct the buildings in that area provided with water and sewerage connections so also electricity supply. Also, the materials on record would reveal that even after the Notification of the Archaeological Department and the commencement of the Act, the TNEB has issued a further Notification to that effect in the year 2010 and also given 360 Domestic Connections and 78 Commercial Connections to the buildings in that area. In such view of the matter, when TNEB has provided electricity supply to other consumers in the area, it is not known to this Court as to why the Petitioner alone has been discriminated, applying the effect of the Notification and the provisions of the Act, which act is a clear violation of Article 14 of the Constitution of India.

24. In response to an RTI Petition, the Executive Engineer/Third Respondent has confirmed that in the survey numbers mentioned in the RTI Petitions coming under Restricted and Regulated area as per Archaeological Survey Department in Zamin Pallavaram, 360 Domestic Service Connections and 78 Commercial Service Connections were effected from 1.1.2010.

25. More interestingly, the Superintending Archaeologist, Archaeological Survey of India (ASI), Sixth Respondent herein, has, with reference to a Letter, dated 6.6.2011, of one G.J. Chinnasamy of Uthiramerur, Kancheepuram District, has clarified that the Amendment Act has nothing to do with EB Connection but only with construction activities and hence NOC for EB Connection cannot be entertained.

26. It is no doubt, permission for carrying out any public work or project essential to the public or other constructions shall not be granted in any

prohibited area on and after the date on which the Amendment Act came into force, which was given retrospective effect from 16.6.1992. It is also significant that the history of monuments shall not be destroyed by giving No Objection Certificates for construction and approval by the Planning Authorities including the supply of Electricity Connection in the Prohibited or Restricted Area, by the ignorance of the authorities in applying the provisions. In other words, this Court will not allow any authority to permit any construction in the Prohibited or Regulated Areas and provide further amenities. In this case also, no permission for construction of Multi-storied Apartments could have been granted, were the authorities vigilant enough in implementation of the law and the electricity connection without production of No Objection Certificate from the Competent Authority. If the authorities intend to take action against the Petitioner for any violation with regard to construction, it shall be only in accordance with law and the same action applies to other similarly placed persons also in that area. Therefore, the whole concern of this Court is that the instant case requires a similar treatment as was extended to other persons in the area. To that extent, this Court opines that the impugned demand of the Fourth Respondent insisting on No Objection Certificate from the Competent Authority would vitiate the entire proceedings.

27. In the case relied upon by the learned Counsel for the Respondents in Archaeological Survey of India and Others Vs. Narender Anand and Another, cited above, the building plan of Respondents 1 & 2 therein who owned a plot in Janpath Lane was sanctioned sometime in September, 2000. Thereafter, the Respondents demolished the existing structure and started digging a foundation for the new building. On 5.5.2001, the Conservation Assistant of Archaeological Survey of India lodged a complaint about excavations and constructions undertaken by Respondents which was in violation of the prohibition contained in Notification dated 16.6.1992. The Archaeological Survey also informed New Delhi Municipal Corporation that the sanction accorded by it was contrary to the Notification. Thereupon, NMDC issued Notice dated 23.5.2001 to the Respondents directing them to stop construction and to obtain necessary permission from Archaeological Survey of India. Respondents 1 & 2 therein challenged the letter of NDMC and prayed that the restriction imposed on the construction of building be declared as nullity. A learned Single Judge of the Delhi High Court held that the prohibition contained in the Notification dated 16.6.1992 cannot be made applicable to the plot of Respondents 1 & 2 therein. During the pendency of the Appeal filed against the order of the learned Single Judge, Heritage and Culture Forum, Delhi, filed a Writ Petition by way of public interest litigation and prayed for issuance of a mandamus for stopping the construction of multi-storied building on the plot owned by Respondents 1 & 2 therein. The Respondents, besides challenging the locus standi of Heritage and Culture Forum to challenge the permission granted to them for the construction of a building, pleaded that Jantar Mantar, New Delhi, cannot be treated as a Protected Monument because the Notification dated 3.5.1997 was not published in the

Official Gazette, and as such, the prohibition contained in Notification dated 16.6.1992 was inapplicable to them. The Division Bench of the High Court before whom the Writ Petition came up opined that Jantar Mantar was already declared a Protected Monument by Notification dated 4.10.1996 and that in view of the prohibition contained in Notification dated 16.6.1992, the Respondents were not entitled to raise construction on Janpath Lane because the same was within 100 metres of the protected monument. It also directed the Central Government to review the Notification dated 16.6.1992. Against the said decision of the Division Bench of the Delhi High Court, ASI has moved the Supreme Court and during the pendency of the Appeal before the Supreme Court, the Ancient Monuments and Archaeological Sites and Remains Act, 1958, was amended by the Ancient Monuments and Archaeological Sites and Remains Act (Amendment and Validation) Act, 2010, and Sections 20-A & 20-B were inserted with effect from 16.6.1992. In those circumstances, the Supreme Court allowed the Appeal, holding that the High Court was not justified in directing the Central Government to review or reconsider the Notification 16.6.1992 and to that extent the impugned judgment was set aside.

28. This is a case where the Petitioner has obtained all necessary permissions for construction of the multi-storied apartments and completed the construction and is waiting for electricity connections. Therefore, the above judgment of the Supreme Court cannot be made applicable to the present case, as the facts and circumstances herein are different.

29. Following the Notification, dated 16.6.1992, coupled with the provisions contained in the Principal Act and the Amendment Act and also the Rules, it is mandatory for any person who wants to make construction in the prohibited or regulated area to obtain NOC from the Competent Authority and the ambiance of the Protected Monuments cannot be polluted by grant of any such permission by the authorities. This Court would not compromise on that matter at any cost. But, the utmost concern of this Court is that why the authorities, keeping the above provisions in cold storage all along by granting permission to others for construction so also the Electricity Connection, should insist on the Petitioner alone for production of NOC from the Competent Authority for effecting Electricity Connection. This attitude on the part of the authorities, in the opinion of this Court, is a clear discrimination under Article 14.

30. It is also pertinent to mention here that, earlier, when the Petitioner moved this Court in W.P. No. 25094 of 2011 as there was no action by the Respondent-Officials on his Application, by an order, dated 8.2.2012, this Court directed the Respondents 1 to 4 to consider and pass orders to provide Electricity Connection to the premises of the Petitioner in question without insisting on production of No Objection Certificate or Completion Certificate from CMDA, the Fifth Respondent therein. Even then, the Fourth Respondent has passed the order impugned, much to the raising of eyebrows of the Petitioner.

31. Under the circumstances and in view of the fact that the Sixth Respondent/

ASI, in reply to a letter, has admitted that for supply of Electricity Connection, NOC is not necessary and that the Amendment Act is not applicable coupled with the admission of the Third Respondent, to an RTI query, that after the Amendment Act on and from 1.1.2010, 360 Domestic Service Connections and 78 Commercial Service Connections have been given in the Prohibited/Regulated Areas, this Court has no iota of doubt to come to a definite conclusion that the Writ Petitioner is absolutely entitled for Electricity Service Connections, without production of NOC from the Competent Authority. For all the foregoing reasons, this Writ Petition is allowed and the impugned proceedings of the Fourth Respondent are quashed. Accordingly, the Respondents to 4 are directed to provide 121 service connections to the Petitioner property at Natesan Salai, Perumal Nagar, in Survey No. 67/2, 69/2 & 69/3A1, T.S. No. 4, Block No. 11, Ward C of Zamin Pallavaram Village, Pallavaram Municipality, Tambaram Taluk, Kancheepuram District, without insisting on No Objection remains uniformly in accordance with law, to safeguard the structures. No costs. Consequently, the connected M.P. No. 1 of 2012 is closed.