
(2019) 08 RAJ CK 0084

In the Rajasthan High Court

Case No : Special Appeal Writ No. 291 Of 2018 In Civil Writ Petition No. 23940 Of 2017

Santosh Kumar Goyal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-08-2019

Acts Referred:

Ancient Monuments And Archaeological Sites And Remains Act, 1958 — Section 20C, 20D

Citation : (2019) 08 RAJ CK 0084

Hon'ble Judges : Mohammad Rafiq, J; Narendra Singh Dhaddha, J

Bench : Division Bench

Advocate : Anita Agarwal, Parag Rastogi, Shailendra Singh, Arvind Sharma

Final Decision : Disposed Off

Judgement

This appeal is directed against the judgement of the learned Single Judge dated 11.01.2018, who thereby upheld the order passed by the respondent dated 6.3.2017 (Annexure-11), the show cause notice served on the appellant to remove illegal building/construction, order dated 14.8.2017 (Annexure-14) for revocation of the permission earlier granted on 28.7.2016 and the order of removal of unauthorised construction dated 2.11.2017 (Annexure-16).

Learned counsel submitted that the learned Single Judge was erred in law in holding that the Director, Department of Archaeology and Museums, Government of Rajasthan, Jaipur was not a competent authority. The affidavit filed by the Superintending Archaeologist, Archaeological Survey of India, Jaipur, Circle, Jaipur on 28.1.2019 pursuant to the order of this Court dated 18.12.2018 has substantiated this fact that he was very much competent. The notification 25.2.2014 filed with the aforesaid affidavit issued by the Ministry of Culture (Archaeological Survey of India) at item no.22 includes the Director, Department of Archaeology and Museums, Government of Rajasthan, Jaipur in relation to the State Government as the competent authority for the purpose of Section 20C

and 20D of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short-`the Act of 1958').

Shri Parag Rastogi, learned counsel for the respondent has although does not dispute the competence of Director, Department of Archaeology and Museums, Government of Rajasthan, Jaipur. He however submits that while permission was granted to the appellant for carrying out the repairs, but he has raised the additional constructions and extended the roof by putting the iron structures and also built a staircase (mumty) on the top of the building. This kind of work cannot be merely considered as repair. Thus, the appellant exceeded the permission.

Apparently the letter of permission dated 28.7.2016 indicates that the permission was granted for repair of the ground floor with the total height of 3.35m (excluding mumty, parapet, water tank etc.) subject to specific condition that no new construction shall be carried out and if required NOC from other department shall also be obtained.

Section 20C of the Act of 1958 provides as under:

20C. Application for repair or renovation in prohibited area, or construction or re-construction or repair or renovation in regulated area.?

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

(2) Any person, who owns or possesses any building or structure or land in any regulated area, and desires to carry out any construction or re-construction or repair or renovation of such building or structure on such land, as the case may be, may make an application to the competent authority for carrying out construction or reconstruction or repair or renovation, as the case may be."

In view of aforesaid provision, the approval was required to carrying out any repair or renovation of such building or structure by making an application to the competent authority. The fresh construction would not be covered within the purview of repair/renovation. Apparently the appellant has raised the fresh construction regarding projection of balcony for the purpose of extension of roof, which is beyond the limit.

While, therefore, we do not agree with the learned Single Judge that the authority, who granted the permission was not competent, however, the violation of the permission is apparently established, especially from perusal of the old and new photographs of the building in question. We therefore direct that if the appellant does not remove the additional construction on his own within next two months, it would be open for the respondents to undertake the work of such

removal at his costs and expense.

The appeal is disposed of accordingly.