
(2007) 04 SHI CK 0010
In the High Court Of Himachal Pradesh

Satinder Kumar and Others	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 16

Citation : AIR 2007 HP 77 : (2007) 2 ShimLC 242

Hon'ble Judges : Surinder Singh, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—The Viceregal Lodge at Shimla has been the subject-matter of a number of writ petitions. At one stage there was a proposal to turn this building into a five star hotel. One Rajeev Mankotia thereafter filed a Writ Petition (C) No. 862 of 1990 in the Supreme Court of India. This petition was disposed of by an erudite judgment reported in *Rajeev Mankotia Vs. Secretary to the President of India and others*,

2. After the Shimla became the summer capital of British India there was a move to find a suitable site and build an appropriate residence for the Viceroy of India. The Viceregal Lodge was built at the present site and the 17th Viceroy, Earl Dufferin, was the first Viceroy to occupy the premises. The history of the building has been encapsulated by the Apex Court in para 2 of the aforesaid judgment which reads as follows:

2. The journey of Simla, Summer Capital of the Supreme Government, started in 1827 by the first Governor General, Earl of Amherst and Viceregal Lodge, the official residence built by the 17th Viceroy, Earl Dufferin, was occupied on July 28, 1888. Though Lord Dufferin and Lady Dufferin personally supervised its taking finished shape, its completion work went on till September, 1888 which led the present shape of the building given by Earl of Marquis of Lansdowne till 1889-the only Viceroy who exclusively levied therein during his entire tenure i.e.,

from 10th December, 1888 to 26th June, 1894 in Summer Camp. The building was built with an exquisite Himalayan gray stones and personified the English Renaissance of Elizabethian style of architecture. The beauty and grandeur of the building is unique. The Viceroys/Governor Generals used this building as summer Camp from April to October of each calendar year and the British ruled the entire India from this building. It was also used as part of Legislature Wing. Ultimately, after independence, it was renamed as "Rastrapati Niwas" dawning with smile the freedom for Bharat and the Presidents of the Bharat Republic stayed therein as Summer Resort until Dr. Sarvepalli Radhakrishnan, the second President had it handed over to the Indian Institute of Advanced Studies in the year 1964. The President himself had inaugurated the Institute when Dr. Zakir Hussain, then as its Chairman, and who later became the President of India, had chaired the meeting. It thus furnishes the historical evidence of the Colonial holocaust unleashed on Indians and reflects upon the triumph of Indian nationalism; it has laid seedbed to the end of the British colonisation. Whether such a building is required to be maintained as historical monument of national importance, is the question before us.

3. The Apex Court after considering the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short the Ancient Monuments Act) and also keeping in view the importance of the building in the historical context of the various important decisions and meetings which had taken place in the building and the manner in which the building was inextricably linked with the freedom struggle, felt that such a historic building should not be allowed to be used as a hotel and should be preserved in its historical ambience and form. The Apex Court on 19th August, 1996 directed the Government of India to notify the entire area of Viceregal Lodge as a protected ancient monument and finally notification in this behalf was issued on 6th May, 1997. Thus the protection and preservation of the Viceregal Lodge and the appurtenant land and buildings as a part of historical heritage became a fait accompli by orders of the Apex Court. It was only due to the intervention of the Apex Court and the various orders passed by it from time to time that the Government of India declared the Viceregal Lodge Estate as an Ancient Monument within the meaning of Ancient Monuments Act. The Apex Court in the penultimate paragraph of its judgment had directed the Archaeological Department to take effective steps for repairing and storing the building in its natural beauty and grandeur.

4. It is in the above context that we shall proceed to decide this petition. A Church known as All Saints Church was consecrated on 6th August, 1885. This Chapel is situated within the bounds of the Viceregal Lodge Estate.

5. The petitioners who are Christians pray that the ancient church known as "All Saints Church, Boileauganj, Shimla" within the premises of Indian Institute of Advanced Study, previously known as Vice Regal Lodge, should not be converted to any other purpose and that the same should be utilized only for the purpose of Church and the petitioners and other followers of Christian faith should be

permitted to enter the Church and perform religious functions, appoint a Priest for carrying out religious services inside the Church and they may also be permitted to carry out necessary prayers, renovation, restoration in the Church.

6. The petitioners and other members of the Christian community firstly claimed ownership over the said church. This claim of theirs was rejected by the Sub-Judge 1st Class (4), Shimla and the appeal filed by them was rejected by the learned District Judge, Shimla vide Judgment dated 24-5-2003 in Civil Appeal No. 61-S/13 of 2001, dated 24-5-2003. This judgment was not challenged and it is clear that the petitioners have no right to claim ownership on the said property. This matter has also been clearly settled in CWP No. 1074 of 2005.

7. The petitioners and other members of the Christian community unauthorisedly took possession of the church and proceedings were initiated against them under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The petitioners were ordered to be evicted and this order was upheld by this Court in CWP No. 1074 of 2005.

8. Now the petitioners want to take control of the Church by another method. In the petition it has been urged that under the provisions of the Places of Worship (Special Provisions) Act, 1991, hereinafter referred to as the Places of Worship Act, no place of worship can be changed to any other use. This contention of the petitioners has been opposed by the respondent and it is stated that the entire Vice Regal Lodge Estate has been declared to be an ancient monument of national monument under the Ancient Monuments Act in compliance to the directions of the Apex Court referred to above. Confronted with this position, Mr. Ajay Kumar, learned Counsel for the petitioners, has relied upon the provisions of Section 16 of the Ancient Monuments Act and contends that the petitioners cannot be denied access to the Church and have an inherent right to carry out worship in the Church.

9. To appreciate the rival contentions of the parties, it would be appropriate to set out certain provisions of the Places of Worship Act as well as the Ancient Monuments Act.

10. Sections 3, 4(1) and 4(3) of the Places of Worship Act read as follows:

3. Bar of conversion of places of worship.--No person shall convert any place of worship of any religious denomination or any section thereto into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.

4. Declaration as to the religious character of certain places of worship and bar of jurisdiction of Courts, etc.--(1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.

(2) xxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(3) Nothing contained in Sub-section (1) and Sub-section (2) shall apply to,-

(a) any place of worship referred to in the said Sub-section which is an ancient and historical monument or an archaeological sites or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any other law for the time being in force;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in Sub-section (2), finally decided, settled or disposed of by a Court, tribunal or other authority before the commencement of this Act.

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any Court, tribunal or other authority being barred by limitation under any law for the time being in force.

11. Reliance placed by the petitioners on Section 3 of the Act. is totally misplaced. Section 3 of the Act prohibits the conversion of any places of worship of a particular religion, religious denomination or section into a place of worship of some other sect of the same religion or of any other religion or sect. What this Section prohibits is the conversion of a place of religious worship from one religion or sect to some other religion or sect. In our considered opinion, Section 3 will have no application when the conversion is for a secular or non-religious purpose. Section 3 of the Act does not prohibit the conversion of a religious places of worship to a non-religious purpose.

12. However, Section 4(1) of the Act clearly lays down that the religious character of a place of worship as existing on 15-8-1947, i.e. the date India attained independence, shall continue to be the same. The protection to places of worship granted u/s 4(1) is qualified by the provisions of Section 4(3) and a bare reading of Clause (a) of Sub-section (3) of Section 4 of the Places of Worship Act clearly shows that in case of any place of worship which is an ancient and historical monument and is so declared under the Ancient Monuments Act, then the provisions of Sub-section (1) shall not apply to it.

13. Mr. Ajay Kumar, learned Counsel for the petitioners, when confronted with the provisions of Sub-clause (a), raised a plea that the place of worship should have been declared to be an ancient and historical monument prior to the enforcement of the Places of Worship Act. We are not at all in agreement with this plea. The clause only refers to places of worship which are ancient or historical monuments. This clearly indicates that the inclusion under the Ancient Monuments Act can be done even after the 11th day of July, 1991 which was the date of the commencement of the Places of Worship Act. It would also be pertinent to mention that under the Ancient Monuments Act, an ancient

monument is a structure, erection or monument etc. which has been in existence for not less than 100 years. Therefore, any structure, erection or monument which is more than 100 years old is an ancient monument. The Church in question is definitely an ancient monument and could be declared to be so.

14. The relevant provisions of Ancient Monument Act are:

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) "ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes-

(i) the remains of an ancient monument, (ii) the site of an ancient monument, (iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(iv) the means of access to and convenient inspection of an ancient monument;

(j) "protected monument" means an ancient monument which is declared to be of national importance by or under this Act.

3. x x x x x x x x x x x x x x x

4. Power of Central Government to declare ancient monuments, etc. to be of national importance.--(i) Where the Central Government is of opinion that any ancient monument or archaeological sites and remains not included in Section 3 is of national importance, it may, by notification in the Official Gazette, give two months' notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance; and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification, object to the declaration of the monument, or the archaeological site and remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument or the archaeological site and remains; as the case may be, to be of national importance.

(4) A notification published under Sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or the archaeological site and remains to which it relates is of national importance for the purposes of this Act.

5-15. x x x x x x x x x

16. Protection of place of worship from misuse, pollution or desecration.--(1) A protected monument maintained by the Central Government under this Act which is a place of worship or shrine shall not be used for any purpose inconsistent with its character.

(2) Where the Central Government has acquired a protected monument u/s 13, or where the Director-General has purchased, or taken a lease or accepted a gift or bequest or assumed guardianship of a protected monument u/s 5 and such monument or any part thereof is used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument or part thereof, from pollution or desecration-

(a) by prohibiting the entry therein, except in accordance with the conditions prescribed with the concurrence of the persons, if any, in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(b) by taking such other action as he may think necessary in this behalf.

17. xxxxxxxx

18. Right of access to protected monument.--Subject to any rules made under this Act, the public shall have a right of access to any protected monument.

15. A reading of the definition clause wherein Ancient Monument is defined, clearly shows that no declaration is required for it to be classified as an ancient monument. If the structure etc. has been existing for more than 100 years and falls within the definition of Clause (a) of Section 2, it would be an ancient monument. However, declaration u/s 4 is required for an ancient monument to come within the category of "Protected Monument". A declaration has been made by the Central Government declaring the Viceregal Lodge Estate (Rashtrapati Niwas) to be an ancient monument of National importance. This has been notified vide Notification dated 11th November, 1997 attached with the reply. Admittedly the Church in question forms part of Khasra Nos. 540 and 541 which is part of this estate and, therefore, the Church must also be deemed to be an ancient monument of National importance.

16. Relying upon Sub-section (1) of Section 16 of the Ancient Monuments Act, Mr. Ajay Kumar, learned Counsel for the petitioners, submits that the protected monument being a place of worship should not be used for any purpose inconsistent with its character and, therefore, the petitioners have a right to come and worship in the Church and hold their congregation there. In the alternative, he submitted that even if such congregation is not allowed on every day, the same should be allowed on Sundays and on the days of Christian festivals. He also submits that the entire public has a right of access to protected monuments u/s 18 and the petitioners cannot be denied entry into the Church.

17. On the other hand, Mr. Sandeep Sharma, Assistant Solicitor General of India,

submits that the right to enter the Church or the right to have access to the Church does not give the petitioners a right to worship in the Church.

18. Both sides have been at logger-heads on the issue whether the Church in question was a private Church of the erstwhile Viceroy of India or whether the general public was allowed entry into the Church. We are of the view that the material on record does not show that the members of the public were free to use the Church as and when they wanted. It also appears that this Church was in fact not in use after independence when it was part of the Estate of the Governor General of India and later President of India. There is no material on record to show that the Church in question was actively used as a place of worship till some members of the Christian community forcibly occupied the same-some years back.

19. Even assuming that the public had a right of entry, since the place of worship in question is an ancient and historical monument of National" importance so declared by the Central Government, the protection of Section 4(1) of the Place of Worship Act is no longer available. There can be no manner of doubt that the ownership of the Church vests in the Central Government and the petitioners and the members of the Christian community have no right to claim ownership on the same.

20. Section 16 of the Ancient Monument Act clearly lays down that a protected monument which is also a place of worship should not be used for any purpose inconsistent with its character. The question which arises is whether this means that the place of worship must continue to be used as an active place of worship or not? Or does it mean that the place of worship should not be converted to such a use which is against its religious character.

21. We are of the view that the places of worship should not be used for some purpose which runs counter to its nature as a religious place of worship, but it can always be used for some other purpose which is not inconsistent with its religious character. We are of the view that once a monument has been declared to be a protected monument and is owned by the Government, then the congregation cannot insist that the place of worship must actually and actively be used for religious services.

22. No doubt, every member of the public u/s 18 has a right of access to such monument. This right of access shall be available to all irrespective of caste, creed or colour. This right of access cannot be transformed to mean a right to have organized congregational worship. Right of access given its grammatical meaning would only mean the right of ingress and egress. Therefore, any member of the public can visit the Church subject to the rules framed under the Act. but this does not mean that the members of the Christian community have a right to congregate in the Church, use it for organized worship, appoint a Priest and manage the same. This would virtually amount to negating the judgment of the Apex Court and the provisions of the aforesaid two Acts.

23. Mr. Sandeep Sharma has submitted that the respondent is renovating and repairing the Church and has no intention to use it for any purpose inconsistent with its character.

24. The Indian Institute of Advanced Studies is housed in the Viceregal Lodge Estate. This is one of the highest centres of learning in the country. The estate and building is one of the land marks of Shimla. This grandiose and imposing building was constructed in the year 1985. This estate housed the Viceroys of the British Empire till India attained independence on 15th August, 1947. The first few Governor Generals and Presidents of India also used this estate as their summer retreat. However, the great philosopher thinker Dr. Sarvapalli Radhakrishnan, the then President of India decided to dedicate this property for the cause of education and, therefore, the Indian Institute of Advanced Studies was housed in the entire estate. When this estate is used as a seat of learning, it cannot be said that it is being used for a purpose inconsistent with its religious character.

25. We have already referred to the judgment of the Apex Court. The entire emphasis of the Apex Court was to ensure that the entire Viceregal Lodge Estate is restored to its original grandeur. Obviously, visitors can visit the ancient monument as per relevant rules and after paying admission fees which may be fixed, but as we have held above, no person has the right to worship in the Church. Keeping in view the aforesaid facts and the fact that the respondents have clearly stated that they are only renovating and repairing the Church, we dismiss this writ petition by holding that the petitioners have no right to claim the reliefs prayed for.

26. At the same time, we want to emphasize the fact that as per law the respondents cannot use the Church or its building for a purpose inconsistent with its religious character. The respondents are, therefore, directed to ensure that the building is repaired in a proper and dignified manner and is restored to its pristine glory. The petitioners, like other members of the public, can visit the Church within the hours prescribed on payment of fees.

27. With the above directions the writ petition stands disposed of.