

(2019) 07 SC CK 0028

In the Supreme Court Of India

Case No : Contempt Petition (Civil) No. 697 Of 2017 In Civil Appeal No. 2431 Of 2006

Shiv Darshan Singh

APPELLANT

Vs

Rakesh Tiwari, Director General, Archaeological Survey Of India (Asi) & Ors

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 49
Ancient Monuments And Archaeological Sites And Remains Rules, 1959 — Rule 31, 32, 33
Ancient Monuments Preservation Act, 1904 — Section 3, 3(1)
Ancient Monuments And Archaeological Sites And Remains Act, 1958 — Section 2(a), 2(ha), 2(l), 2(m), 4A, 20A, 20A(1), 20A(2), 20A(3), 20A(3)(b), 20B, 20C, 20F, 20Q, 30A, 30B, 38, 38(1), 38(2)

Citation : AIR 2019 SC 3257 : (2019) 9 Scale 223 : (2019) 7 SLT 456 : (2019) 4 ALT 270

Hon'ble Judges : Uday Umesh Lalit, J;Indira Banerjee, J

Bench : Division Bench

Advocate : Abhijit Sengupta, Annam D. N. Rao, Jasmeet Singh, Yoginder Handoo, Sahil Tagotra, Sonal Jain

Final Decision : Dismissed

Judgement

Uday Umesh Lalit, J

1. This contempt petition, inter alia, seeks initiation of action against the Respondents for alleged violation of the judgment and order dated 16.01.2012 passed by this Court in Civil Appeal No.2431 of 2006 ('the Judgment', for short) and also seeks orders directing Respondent Nos.4 and 5 to demolish the structure raised by them.

2. While dealing with an ancient monument popularly known as Jantar Mantar in New Delhi, it was observed by this Court in the Judgment:-

"7. Jantar Mantar, New Delhi is one of the five unique observatories built between

1699 and 1743 by Maharaja Jai Singh (II) of Jaipur, who was a great Mathematician and Astronomer. The other observatories are at Jaipur, Ujjain, Varanasi and Mathura. Jantar Mantar, New Delhi, like other observatories has several instruments that can graph the path of the astronomical universe. There is a colossal Samrat Yantra at the periphery of Jantar Mantar. To the South of Samrat Yantra, there is an amazing instrument called Jai Prakash, which has two concave hemispherical structures used for determining the position of the Sun and celestial bodies. The other important yantras are Misra Yantra, Dakshinavartti Bhatti Yantra, Karka Rasivalaya, Niyat Chakra, Rama Yantra, Brhat Samrat and Sasthamsa Yantra. Unfortunately, some of these yantras have been rendered unworkable or have become non-functional. One of the main reasons for this is the construction of multistoried structures which have come up in the vicinity of Jantar Mantar in the last 25 to 30 years."

3. In exercise of power conferred by Section 3(1) of the Ancient Monuments Preservation Act, 1904 (7 of 1904), the Central Government had issued Notification dated 04.10.1956 which was published in the Gazette of India dated 13.10.1956, declaring Jantar Mantar, New Delhi to be a "protected monument."

4. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as 'the Act') was enacted to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects. The term 'ancient monument' is defined by Section 2(a) of the Act as under:

"2(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."

5. By virtue of Section 3 of the Act, all protected monuments declared under the erstwhile statutory regime, were deemed to be ancient monuments under the Act. Sub-Sections (1) and (2) of Section 38 of the Act are as under:

"38. Power to make rules.?(1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:?"

(a) the prohibition or regulation by licensing or otherwise of mining, quarrying, excavating, blasting or any operation of a like nature near a protected monument or the construction of buildings on land adjoining such monument and the removal of unauthorised buildings;

(b) the grant of licences and permissions to make excavations for archaeological purposes in protected areas, the authorities by whom, and the restrictions and conditions subject to which, such licences may be granted, the taking of securities from licensees and the fees that may be charged for such licences.

(c) the right of access of the public to a protected monument and the fee, if any, to be charged therefor;

(ca) the categories of ancient monuments or archaeological sites and remains, declared as of national importance, under sub-section (1) of section 4A;

(cb) the manner of making application for grant of permission under sub-section (1) of section 20D;

(cc) the category of applications in respect of which the permission may be granted and applications which shall be referred to the Authority for its recommendation, under sub-section (2) of section 20D;

(cd) the other matters including heritage controls such as elevations, facades, drainage systems, roads and service infrastructure (including electric poles, water and sewer pipelines) under sub-section (2) of section 20E;

(ce) the manner of preparation of detailed site plans in respect of each prohibited area and regulated area and the time within which such heritage bye-laws shall be prepared and particulars to be included in each such heritage bye-laws under sub-section (3) of section 20E;

(cf) salaries and allowances payable to, and the other terms and conditions of service of, the whole- time Chairperson and whole-time members, or fees or allowances payable to the part- time members, of the Authority under sub-section (1) of section 20H;

(cg) the form in which and time at which the Authority shall prepare an annual report giving full description of its activities for the previous year under section 20P;

(ch) the form and manner in which the Authority and competent authority shall furnish information to the Central Government under Section 20Q;

(d) the form and contents of the report of an archaeological officer or a licensee under clause (a) of sub-section (1) of section 23;

(e) the form in which applications for permission under section 19 or section 25 may be made and the particulars which they should contain;

(f) the form and manner of preferring appeals under this Act and the time within

which they may be preferred;

(g) the manner of service of any order or notice under this Act;

(h) the manner in which excavations and other like operations for archaeological purposes may be carried on;

(i) any other matter which is to be or may be prescribed."

6. In exercise of power conferred by Section 38, the Central Government enacted the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 ('the Rules', for short). Rules 31, 32 and 33 of the Rules are to the following effect:

"31. Notice or intention to declare a prohibited or regulated area. - (1) Before declaring an area near or adjoining a protected monument to be a prohibited area or a regulated area for purposes of mining operation or construction or both, the Central Government shall, by notification in the Official Gazette, give one month's notice of its intention to do so, and a copy of such notification shall be affixed in a conspicuous place near the area.

(2) Every such notification shall specify the limits of the area which is to be so declared and shall also call for objection, if any, from interested persons.

32. Declaration of prohibited or regulated area.- After the expiry of one month from the date of the notification under rule 31 and after considering the objections, if any, received within the said period, the Central Government may declare, by notification in the Official Gazette, the area specified in the notification under rule 31, or any part of such area, to be a prohibited area, or, as the case may be, a regulated area for purposes of mining operation or construction or both.

33. Effect of declaration of prohibited or regulated area. - No person other than an archaeological officer shall undertake any mining operation or any construction, -

(a) in a prohibited, area, or

(b) in a regulated area except under and in accordance with the terms and conditions of licence granted by the Director-General."

7. In terms of power conferred under Rule 31 of the Rules, the Central Government issued a Notification dated 15.05.1991 which was published in the Gazette of India dated 25.05.1991 and gave notice of intention to declare an area of 100 meters from the protected limits and further beyond it upto 200 meters from the protected monument(s) as prohibited and regulated areas respectively. After considering objections and suggestions received from the general public, the Central Government issued Notification dated 16.06.1992 ("the Notification" for short) which reads as under:-

"DEPARTMENT OF CULTURE (Archaeological Survey of India) New Delhi, the 16th June, 1992. (ARCHAEOLOGY)

S.O. 1764-Whereas by the notification of the Government of India in the Department of Culture, Archaeological Survey of India No. S.O. 1447 dated the 15th May, 1991 published in Gazette of India, Part-II Section 3 sub-section (ii) dated 25th May, 1991, the Central Government gave one month's notice of its intention to declare area upto 100 metres from the protected limits, and further beyond it upto 200 meters near or adjoining protected monuments to be prohibited and regulated areas respectively for purposes of both mining operation and construction.

And whereas the said Gazette was made available to the public on the 5th June, 1991.

And whereas objections to the making of such declaration received from the person interested in the said areas have been considered by the Central Government.

Now, therefore, in exercise of the powers conferred by Rule 32 of the Ancient Monument and Archaeological sites and Remains Rules, 1959, the Central Government hereby declares the said areas to be prohibited and regulated areas. This shall be in addition to and not in any way prejudice the similar declarations already made in respect of monuments at Fatehpur Sikri; Mahabalipuram; Golconda Fort, Hyderabad (Andhra Pradesh); Thousands Pillared Temple, Hanamkonda, Distt. Warangal (Andhra Pradesh); Shershah' Tomb, Sasaram (Bihar); Rock Edict of Ashoka, Kopbal, Distt. Raichur (Karnatka); Gomateshwara Statue at Sravanbelgola, District Hassan (Karnataka); Elephanta Caves, Gharapur, District Kolba (Maharashtra)."

8. By virtue of the Notification, areas of 100 and 200 metres from the ancient monument Jantar Mantar, New Delhi stood declared to be prohibited and regulated areas respectively for the purposes of mining and construction. The concept of "prohibited area" and "regulated area" got further elaborated by amendment to the Act effected in the year 2010 defining these two expressions by Section 2(ha) and 2(l) respectively and by inserting Sections 20A to 20Q in the Act. Sections 2(ha), 2(l) and 2(m) as well as Sections 20A and 20B were given retrospective effect from the date of the Notification i.e. from 16.06.1992 while Sections 20C to 20Q were inserted with effect from 29.03.2010. Sections 2(ha), (l), (m), 20A and 20B are as under:-

"Section 2(ha) "prohibited area" means any area specified or declared to be a prohibited area under Section 20A.

Section 2(l) "regulated area" means any area specified or declared under section 20B;

Section 2(m) "repair and renovation" means alterations to a pre-existing structure or building, but shall not include construction or re-construction;

20A. 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 the prohibited area having regard to the classification of any protected monument or protected area, as the case may be, under section 4A.

(2) Save as otherwise provided in section 20C, 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.

20B. 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 and 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, under section 4A:

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."

9. The effect of this statutory regime was considered in the Judgment and this Court had issued certain directions, which as per this Contempt Petition have been violated by the Respondents.

10. However, before coming to the directions issued by the Judgment, the facts leading to the filing of this contempt petition, in brief, may be set out as under:-

(a) On 25.07.1985 a Collaboration Agreement was entered into between the petitioner, owner of Plot No.14, Janpath Lane, New Delhi (hereinafter referred to as "the subject plot") and Respondent No.5 - M/s Rawal Apartments Pvt. Ltd. for construction of a multi-storey building. A General Power of Attorney was given to Respondent No.4 - Narender Anand, Director of Respondent No.5.

(b) On 21.07.2000, NDMC [New Delhi Municipal Corporation] - Respondent No.2 sanctioned the plans submitted by the Respondents 4 and 5 vide Scheme No.3351, whereafter the old building standing on the subject plot was

demolished and the work for foundation for a new building to be erected on the subject plot was undertaken by Respondent Nos. 4 and 5. While the construction work was in progress, a letter was issued by NDMC on 23.05.2001 requiring that the on-going construction work at the subject plot be immediately stopped and directing the concerned persons to obtain requisite permission from ASI [Archaeological Survey of India] - Respondent No.1.

(c) This led to the filing of Civil Suit No.645 of 2002 by Respondent Nos.4 and 5 seeking injunction against NDMC, Lt. Governor and ASI that there be no interference with the on-going construction. An interim order was passed by a Single Judge of the High Court on 22.03.2002 restraining NDMC from giving effect to the letter dated 23.05.2001. That interim order was modified by the Single Judge on 31.05.2002. However, by further order dated 30.10.2002, the earlier interim order dated 22.03.2002 was made absolute and the later order dated 31.05.2002 was recalled. An appeal was preferred against the order dated 30.10.2002 being FAO (OS) No.414 of 2002.

(d) Around this time, Writ Petition (C) No.2635 of 2002 was filed by Heritage and Culture Forum, in public interest seeking protection of the ancient monument - Jantar Mantar. This writ petition was also taken up for hearing along with FAO (OS) No.414 of 2002.

(e) The Division Bench of the High Court by its order dated 23.07.2004 set aside the order issued by the Single Judge on 30.10.2002. It was held that the subject plot was within 100 meters of the ancient monument Jantar Mantar and in view of the Notification there was absolute prohibition against carrying on of any building activity in the subject plot and the order dated 30.10.2002 passed by the Single Judge could not be sustained. While dealing with the writ petition and considering the submission whether the stipulation of 100 meters prescribed by the Notification had any scientific, pragmatic or logical basis, the Division Bench of the High Court directed the Central Government to review said Notification in the light of the discussion made in its judgment dated 23.07.2004.

(f) The afore-mentioned judgment of the Division Bench was challenged in this Court by ASI and by Respondent No.5 in Civil Appeal Nos.2430 and 2431 of 2006 respectively. While ASI had questioned the direction of the Division Bench as regards the review of the Notification, Respondent No.5 had challenged that part of the judgment which had set aside the order passed by the Single Judge. The Judgment dealt with both the appeals. The appeal of ASI was allowed while the appeal preferred by Respondent No.5 was dismissed by this Court.

(g) The basic facts leading to the filing of appeal before the Supreme Court were dealt with in the Judgment as under:

"12. Respondent Nos. 1 and 2, who own plot No. 14, Janpath Lane submitted an application to the New Delhi Municipal Corporation (for short, 'the Corporation') sometime in August 1986 for sanction of the building plan for the construction of multistoried commercial building. The same was rejected vide letter dated

15.9.1986 on the ground that the area was under comprehensive development and the details of redevelopment controls/drawings, if any, finalised by the Delhi Development Authority (for short, 'the DDA') were not available with the Corporation. After about 7 years, respondent Nos. 1 and 2 again submitted application dated 24.6.1993 for sanction of the building plan. The DDA vide its letter dated 1.10.1993 suggested to the Corporation that plot No. 14, Janpath Lane formed part of redevelopment scheme and the building plan should be approved as per the Development Control Norms. The building plan was finally sanctioned by the Corporation sometime in September 2000 and was released on 5.3.2001. Thereafter, respondent Nos. 1 and 2 demolished the existing structure and started digging foundation for the new building. On 5.5.2001, the Conservation Assistant of Archaeological Survey of India lodged a complaint about the excavation and construction being undertaken by respondent Nos. 1 and 2 in violation of the prohibition contained in notification dated 16.6.1992. The Superintending Archaeologist, Archaeological Survey of India, vide his letter dated 10.5.2001 informed the Corporation that the sanction given by it was contrary to notification dated 16.6.1992. Thereupon, the Corporation issued notice dated 23.5.2001 to respondent Nos. 1 and 2 and directed them to stop the construction and obtain the requisite permission from the Archaeological Survey of India."

(h) The effect of newly introduced Sections 20A to 20F by way of amendment was considered by this Court in the Judgment as under:-

"29. ... In terms of Section 20A(2), it has been made clear that no person other than an Archaeological Officer shall carry out any construction in any prohibited area. This is subject to Section 20C, which can be treated as an exception to Section 20A(2). That section 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 20C will take 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. Section 20A(3) lays down that the Central Government or the Director General can, in exceptional cases and having regard to the public interest, pass a reasoned order and permit a public work or any project essential to the public or other construction in a prohibited area provided that such construction does not have substantial adverse impact on the preservation, safety, security of, or access to the protected monuments or its immediate surrounding. The use of the expression "such other work or project" in clause (b) of Section 20A(3), if interpreted in isolation, may give an impression that the Central Government or the Director General is empowered to allow any other work or project by any person in the prohibited area but, in our view, the said expression has to be interpreted keeping in view the mandate of

Article 49 of the Constitution and the objects sought to be achieved by enacting 1958 Act, i.e. preservation of ancient and historical monuments, archaeological sites and remains of national importance. This would necessarily imply that 'such other work or project' must be in larger public interest in contrast to private interest. In other words, in exercise of power under Section 20A(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 de hors public interest. Any other interpretation of this provision would destroy the very object of the 1958 Act and the prohibition contained in notification dated 16.6.1992 and sub-section (1) of Section 20A 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."

(emphasis added)

(i) As regards the directions issued by the High Court with respect to review or reconsideration of the Notification, the Judgment observed as under:-

"Therefore, in the name of development and accommodating the need for multistoried structures, the High Court could not have issued a mandamus to the Central Government to review/reconsider notification dated 16.6.1992 and that too by ignoring that after independence 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. One of such monument is Jantar Mantar, New Delhi. Some of its instruments have become unworkable/non-functional. This is largely due to construction of multistoried structures around Jantar Mantar. Therefore, we have no hesitation to hold that the High Court was not justified in directing the Central Government to review or reconsider notification dated 16.6.1992 and, to that extent, the impugned judgment is liable to be set aside. We may add that with the insertion of Sections 20A and 20B, the direction given by the High Court for review of notification dated 16.6.1992 has become infructuous and the Government is no longer required to act upon the same.

(j) Finally the operative part of the Judgment stated was under:

"33. In the result, Civil Appeal No.2430 of 2006 is allowed and the direction given by the Division Bench of the High Court for review of notification dated 16.6.1992 is set aside. However, it is made clear that in future the Central Government or the Director General shall not take action or pass any order under Sections 20A(3) and 20C except in accordance with the observations made in this judgment. Civil Appeal No. 2431 of 2006 is dismissed. The parties are left to bear their own costs."

(emphasis added)

(k) Soon after the Judgment, on the recommendations of NMA [National Monument Authority], ASI gave permission for renovation/ repairs of the building standing at the subject plot by its order dated 16.12.2013. Thereafter, Chief Architect of NDMC by his letter dated 05.06.2014 released permission to Respondent Nos.4 and 5.

(l) On 12.01.2015, the petitioner cancelled the Power of Attorney given in favour of Respondent No.4 by a registered Cancellation Deed and on his representations, ASI vide letter dated 06.04.2015 cancelled the permission which was granted on 16.12.2013. However, by subsequent letter dated 01.07.2015 the permission for repairs/renovation was revived by ASI. This led to the filing of Civil Suit No.211 of 2015 in the Court of Additional District Judge - 05, Patiala House Courts, New Delhi seeking reliefs of mandatory and permanent injunction against Respondent Nos. 4 and 5 and Writ Petition No.3425 of 2016 by the petitioner in the High Court of Delhi seeking directions against Respondent Nos.1 to 3 to withdraw/revoke permission given to Respondent Nos.4 and 5 and for direction to stop any work or construction in the subject plot. The Suit as well as the Writ Petition are still pending.

(m) On 29.01.2016 a show cause notice was issued by NMA to Respondent Nos.4 and 5 as to why permission granted earlier on 16.12.2013 be not cancelled since the present construction on the subject plot was neither existing on 16.06.1992 i.e. on the day the Notification was issued nor was such construction erected with the approval of Director General, ASI. On 27.06.2016, NMA - cancelled the earlier permission dated 16.12.2013 on the ground that it was erroneously granted.

(n) Respondent Nos.4 and 5, therefore challenged the Show Cause Notice dated 29.01.2016 as well as the order dated 27.06.2016 passed by the NMA by filing Writ Petition (C) No.7018 of 2016. This Writ Petition is still pending consideration by the High Court.

(o) The instant Contempt Petition was filed in this Court in December 2016 submitting as under:-

"12. That it is submitted that the order dated 31/05/2002 of Ld. Single Judge in Suit No.645/02, order dated 23/07/2004 of Ld. Division Bench in FAO 414/2002 and Hon'ble Supreme Court order / judgment dated 16/01/2012 when read together categorically prohibits any building activity, leave alone building construction, at the suit premises in question. Further the construction, if any done by the builder/contemnor nos. 4 & 5 has to be demolished upto DPC level since ultimately this Hon'ble Court came to the conclusion that no building activity can take place there.

13. That all the respondents/contemnors have willfully and voluntarily disobeyed/ defied the orders of the Ld. Division Bench upheld by this Hon'ble Court. The

Contemnor/Respondent Nos. 1 to 3, who are responsible officers of Govt. Department are willfully and deliberately not complying/implementing the orders/directions of this Hon'ble Court and are liable to be punished as per Section 30-A and 30-C of the AMSAR Act, as amended in 2010 besides being liable for contempt."

It was prayed:-

"a. issue contempt notices to the Contemnors;

b. punish the Contemnors for committing the contempt of the Court for willfully disobeying the order dated 16/01/2012 passed by this Hon'ble Court in CA No.2431/2006 titled as "Narender Anand Vs. Archaeological Survey of India & Ors.";

c. Issue orders to the Contemnor Nos. 1 to 5 to immediately demolish the unauthorized structure raised by the contemnor nos. 4 & 5 since it is a settled law that the contemnor should not be allowed to enjoy or retain the fruits of his contempt as held by this Hon'ble Court in Delhi Development Authority Vs. Skipper Construction Company (P) Ltd.;"

Notice was issued by this Court on 10.07.2017. Respondents appeared and filed their responses.

11. On 24.09.2018 following order was passed by this Court:

"The Principal Secretary, New Delhi Municipal Council (NDMC) is directed to conduct a local inspection with notice to all the parties and submit a report along with an affidavit to this Court as to whether Mr. Narender Anand (Respondent Nos.4 & 5) has done any new construction based on the permission granted by the National Monuments Authority and if so what is the construction, which has been so undertaken, in violation of the order of the Delhi High Court as upheld by this Court. This shall be done within four weeks from today."

12. Accordingly, local inspection was conducted on 09.10.2018 in the presence of the concerned parties and the consequential Report prepared on 22.10.2018 made following observations:-

"4. During inspection held on 09.10.2018, the entire building was found completely finished and status given below reflects the work carried out after 05.06.2014 (when the plans were released for finishing work on the basis of approval by NMA) in comparison to the earlier status of construction observed during PANCHNAMA held on 07.05.2003:

Sl.No

Status of Construction recorded as per Panchnama on 07.05.2003

Status of Construction as on 09.10.2018 (after completion of finishing work as per approval by NMA on 16.12.2013)

i.

Party has structurally completed the ground floor + 4 upper floors including two level basements having height 61'6" from the ground level to terrace level of 4th floor.

Additional structure work of Mumty, Lift Machine Room, Water tank enclosures at two places at terrace; and Under Ground Water Tank, under ground Fire Water tank, STP Tank and Rain Water Harvesting Tank at Ground Level are found completed.

iii.

The fire escape staircase towards east side has been finished with kota stone upto 3rd floor but the main stair case and other FES is unfinished.

The fire escape staircase towards east side has been completely finished with kota stone. The fire escape stair case towards west side and the main stair case have been finished completely i.e. flooring work, wall finishing, railing etc. complete in all respect.

iv.

Lower Basement:- The lower basement is totally unfinished.

The Lower Basement is found finished with respect to flooring, plastering etc. with partitions to make enclosures and sprinkler system, AC ducting etc.

v.

Upper Basement: - The upper basement is totally unfinished (approx.). Party has fixed the frame for ventilators towards East and North side. Party has not constructed the ramp from upper basement level to ground level towards West Side.

The Upper Basement is found completely finished. Ventilator work has been found completed on all sides of the building Ramps connecting upper basement level to ground level have been constructed and completely finished. Electric equipments pertaining to Electric sub-station/ AC plant were found installed.

vi.

Ground Floor: - Party has finished the internal walls and roof ceiling with cement plaster and also fixed the rolling shutter at external façade at places, partitions have been constructed at places 3 ft. high without plaster. Party has constructed two small toilet blocks which are not finished. There is no floor finished at whole of the Ground Floor.

Ground Floor: Finishing work of all internal walls and roof ceiling has been found completed. All the rolling shutters at external façade have been fixed. Both the toilets have been completely finished. Flooring work of the whole

ground floor including Lift Lobby is found completed.

vii.

First Floor: - Party has not finished the flooring except at part portion of the main corridor and has also plastered the ceiling and internal walls constructed at site. Two rolling shutters have been fixed near lift lobby and also fixed door frames and door shutters in part portion. Two toilet blocks have been constructed and are unfinished.

First Floor: Flooring work has been found completed in the entire first floor including Lift Lobby. Ceiling and walls were found completely finished. All the door frames and shutters have been fixed. Both the toilets have been completely finished.

viii.

Second Floor: Party has completed the internal plastering work. Flooring have not been finished except in a part portion of lift lobby and corridor. Two toilet blocks are unfinished. The door frames have been provided/fixed at places.

Second floor: Flooring of entire second floor including lift lobby and corridor have been found completed. Both the toilets have been completely finished. All the door frames and door shutters were found fixed.

ix.

Third Floor: - Party has completed the internal plastering work of the walls as constructed at site including the ceiling. The toilet blocks are totally unfinished. Flooring has not been laid except in a part portion of corridor. Wooden door frames have been fixed.

Third Floor: The entire third floor including toilet blocks including Lift Lobby and corridors are found completely finished. All the door frames and door shutters were found fixed.

x.

Fourth Floor: - This floor is totally unfinished and is without partition walls. Shuttering has not been removed towards outer face of South East Side.

Fourth Floor: The entire fourth floor including Lift Lobby was found completely finished. Partition walls were also found finished in all aspect. All the door frames and door shutters were found fixed.

xi.

Terrace: - Party has constructed 3'-3" high parapet towards north side only. Two RCC columns 2.6m. high and two RCC columns of 1.25 m high have been constructed behind the main stair case. Steel bars of various heights of all the structural columns are seen erected above the terrace level.

Terrace: Parapet wall has been completed on all sides of the building at terrace. Lift machine room and Mumty has been constructed with complete finishing work over lift well and main stair case. Lift machines are found installed in the machine room. Still Frame with louvers enclosures were found erected around the overhead water tanks at two locations.

xii.

The open to sky surface are at ground level has not been finished.

Open area at ground level surrounding the building was found completely finished. One generator was found installed in open area on eastern side. The south side boundary wall & railing has been shifted towards inside plot for road widening, as required/shown in the Sanction Plan. (Generator was not shown in the plans approved by NMA/ NDMC)

xiii.

The building material and shuttering material are scattered in the open area as well as on various floors of the building. One lift crane and concrete mixture are lying at the site. Scaffolding is existing at some places around the building.

Almost all the floors inside the building and open area at ground floor were found clear of building material, scaffolding and shuttering material or any machinery used in construction work, except some unused building material was found stacked in small portions in second floor, upper basement and lower basement.

xiv.

Coloured photographs taken at the time of Panchnama on 07.05.2003 are enclosed at Annexure 'R-14'.

Coloured photographs taken during the inspection on 09.10.2018 are enclosed at Annexure 'R-15'.

Coloured photographs of the building prior to building plan sanction on 05.03.2001, as available in the file records of Architect Department, are enclosed at Annexure 'R-16'.

13. An affidavit was thereafter filed by the Chief Architect of NDMC enclosing the aforesaid Report. The affidavit asserted:-

"7. It is pertinent to mention that previously the Hon'ble High Court of Delhi vide order dated 02.05.2003 passed in FAO(OS) No.414/2002 had been pleased to stay the construction activities at the premises and had directed NDMC and Archeological Survey of India (ASI) to inspect the premises. Pursuant to this order, the premises had been inspected and a panchnama was drawn 07.05.2003 wherein it has been recorded that two basement + ground floor + four upper floors having height of 61'6" from the ground level to the terrace level of the 4th floor had been completed.

8. That the building was not habitable at the time of preparation of Panchnama on 07.05.2003. However, during the inspection undertaken on 09.10.2018, it was observed that the building was found habitable. While the whole building was illegal after judgment dated 16.01.2012 in Civil Appeal No.2431 of 2006 by this Hon'ble Court, however, even at the time of Panchnama on 07.05.2003 the height of the building was found 61 ft 6 inches in contravention to the 55ft height allowed by Hon'ble High Court vide its order dated 22.03.2002 in CS(OS) No.645/2002.

9. That the construction of the building itself having been held to be illegal by this Hon'ble Court vide its order dated 16.01.2012, the same being within 100 metres of the prohibited area of a protected monument, no construction activity was permissible in the said parcel of the land in question and the entire building is liable to be demolished and accordingly NDMC had revoked/cancelled the sanction plans on 27.01.2017. Further NDMC has already issued a Show Cause Notice u/s 247 of NDMC Act on 07.09.2017 and passed a sealing order u/s 250(I) on 09.09.2017. The SCN and order issued by NDMC has been challenged by Narender Anand (Respondent Nos.4 & 5) by filing an application in W.P.(C) 7018/2016 before the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi vide order dated 11.09.2017 has restrained the NDMC from taking any action on the said property in question and stayed the Show Cause Notice issued by NDMC dated 07.09.2017. The stay order dated 11.09.2017 is still continuing and the next date of hearing before the Hon'ble High Court of Delhi is 01.11.2018."

14. During the course of hearing of this Contempt Petition on 23.01.2019, certain developments and factual aspects came to light on perusal of the files. It appeared that though some queries were made and doubts were raised by the Legal Advisor of NDMC in his noting dated 11.03.2014, those queries were not dealt with and yet permission was granted by NDMC. Notices were therefore issued to certain officials including the then Chairperson and Member Secretary of NMA to explain the circumstances in which permission to go ahead with reconstruction/repairing was granted by them. Notice was also issued to the competent authority of ASI to explain his role in the entire matter. Appropriate responses were thereafter filed by the concerned noticees. It is not necessary to deal with every single response but suffice it to say that the factual development leading to the letter dated 05.06.2014 by Chief Architect of NDMC releasing Sanctioned Plans for finishing the existing building as per approved drawings by NMA/ASI, were dealt with in detail in the affidavit by the Deputy Chief Architect, NDMC filed in this Court on 19.02.2019.

15. We heard Mr. Nidhesh Gupta, learned Senior Advocate for the contempt petitioner, Mr. Yogender Handoo, learned Advocate for NDMC Respondent No.2, Mr. Gopal Shankar Narayanan, learned Senior Advocate for Respondents 4 and 5, Mr. ADN Rao, learned Advocate for ASI and NMA and Mr. Parag P. Tripathi, learned Senior Advocate and Mr. Gourab Banerji, learned Senior Advocate for

some of the other noticees.

16. This Contempt Petition principally prays for an appropriate direction that the structure in existence at the site or in the subject plot be demolished and submits that action be taken against the alleged contemnors for violation of the directions issued in the Judgment. In its paragraph 29, the Judgment laid down "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. In other words, in exercise of power under Section 20A(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 de hors public interest. ".

Having laid down the principles of law, in its operative part, the Judgment directed, "... ... in future the Central Government or the Director General shall not take action or pass any order under Sections 20A(3) and 20C except in accordance with the observations made in this judgment."

17. The facts on record need to be considered in the light of the principles so laid down and the direction so issued, to see if any action in exercise of Contempt Jurisdiction is called for.

It is clear from the record that as on the date when the matter was considered and the Judgment was delivered by this Court, the structure as indicated in the Spot Panchnama dated 07.05.2003 was in existence. In the local inspection held on 07.05.2003 it was found that Respondents 4 and 5 had structurally completed the ground floor plus four upper floors including two levels of basement having height of 61 ft and 6 inches from the ground level to the terrace level of the 4th floor. However, the finishing work in the lower basement, upper basement, ground floor, first, second, third and fourth floor as well as terrace was yet to be completed. Though the challenge raised by Respondents 4 and 5 was negatived in the Judgment, no specific direction was passed as to the status of structure that was in existence on the date of the Judgment and whether that structure be pulled down or not.

As evident from the affidavit of the Chief Architect of NDMC and the inspection held on 09.10.2018, though there was no vertical or horizontal expansion of the building as against what obtained in the year 2003, the building was found to be habitable in the inspection held on 09.10.2018 whereas it was not so in the year 2003. The aforesaid affidavit further indicates that apart from cancellation of Sanction Plans on 27.01.2017, action in the form of a Show Cause Notice dated 07.09.2017 and Sealing Order dated 09.09.2017 was undertaken by NDMC, which are subject matter of challenge in Writ Petition (Civil) No. 7018 of 2016.

18. It is true that though no specific directions regarding demolition of the structure that was in existence as on that date were passed in the judgment, the authorities were directed not to take any action or pass any order under Section

20A(3) and 20C of the Act except in accordance with the observations made in the judgment. The basic submission of the petitioner in the contempt petition, however, is that the cumulative effect of all the proceedings including the Judgment passed by this Court would mean that the structure in existence has to be demolished and since no action in that behalf has been taken or initiated, the concerned authorities are guilty of contempt.

After the Judgment was passed by this Court, ASI had initially given permission for renovation/ repair of the structure that was in existence, based on which appropriate permission was also granted by the NDMC. However, those permissions now stand revoked in terms of order dated 27.06.2016 i.e. even before the filing of the present Contempt Petition. A Writ petition filed by Respondents 4 and 5 challenging said order dated 27.06.2016 is still pending consideration by the High Court.

19. In the backdrop of these facts, we have gone through the record and the notings in the file pursuant to which the aforesaid permissions were granted by ASI on 16.12.2013 and by NDMC on 05.06.2014. The permissions were only for completing the finishing work of the existing building without any vertical or horizontal extension of the structure. Though the concerned authorities ought to have been careful when the matter in that behalf was considered, since the challenge is pending consideration before the High Court, we refrain from going into the matter. For the present purposes what is crucial to consider is whether any express direction issued by this Court in the present matter stood violated or not. As this Court had not dealt with the matter as regards status of the construction which was in existence on the day when the matter was considered by this Court, it would not be possible in these proceedings to direct demolition of the existing structure as is sought to be submitted on behalf of the contempt petitioners. The direction that the authorities must not take any action or pass any order under Section 20A(3) and 20C of the Act except in accordance with the observations made in the Judgment is definitely capable of being implemented. But, whether the permissions were rightly granted or not and what is the affect of withdrawal or revocation of those permissions are the issues which must logically and in fairness, be considered in the pending matters. In any event of the matter, with the passing of the order dated 27.06.2016 it cannot be said that the authorities were in violation of the orders passed by this Court. We, therefore, see no reason to entertain this Contempt Petition any longer and the present Contempt Petition is closed.

20. We, however, request the High Court to dispose of all pending matters as expeditiously as possible and preferably within six months in the light of the law declared by this Court in the Judgment. We make it clear that we have considered the matter only from the perspective whether contempt has been made out or not and leave all the issues including status of the structure in existence in the subject plot and whether that structure needs to be demolished or not to be decided in the pending matters.