

(2017) 03 AHC CK 0069

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 19740 of 2016

Syed Waseem Rizvi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 2(db),
Section 20(c), Section 20(d)
Constitution of India, 1950 — Article 226

Citation : (2017) 5 ADJ 371

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : Yashovardhan Swarup, Advocate, for the Petitioner; A.S.G., Gaurav Mehrotra, Neerav Chitranshi, S.M.S. Royakvar and V.B. Kalia, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

1. Heard Shri Yashovardhan Swarup, learned counsel for the petitioner, Shri S.M.S. Royakvar, learned counsel for respondent no.10 & Shri Neerav Chitranshi, learned counsel for respondent nos. 1 to 7.

2. This public interest litigation had been preferred contending that the Multi-Level Parking proposed to be constructed by the Lucknow Development Authority at the site in question was not in conformity with the provisions of the Ancient Monument and Archaeological Sites and Remains Act, 1958 and the 2011 Rules framed thereunder.

3. This Court had granted an interim order on 24th August, 2016 restraining the Development Authority from proceeding with the construction on the ground that the said constructions were being raised without there being any proper permission from the Competent Authority under the aforesaid Act and Rules. During the pendency of the writ petition, the matter appears to have been pursued by the Lucknow Development Authority as well as the Competent

Authority in this regard and taking notice of the same we had passed the following order Yesterday i.e., on 21.03.2017:-

"Heard Shri Yashovardhan Swarup, learned counsel for the petitioner, Shri Sameer Kalia and Shri Neerav Chitranshi, learned counsels for the respondents.

The Lucknow Development Authority (L.D.A.) has filed an affidavit dated 28.2.2017 and the position that emerges on the filing of this affidavit is that admittedly the construction of the Multi-Level Parking had been initiated without there being any permission of the competent authority. After the passing of the interim order on 24.8.2016, the communication which had been made earlier seeking permission was again pursued and this request on behalf of the Lucknow Development Authority for allowing the raising of a Multi-Level Parking was considered by the National Monument Authority in its 146th meeting held on 22.1.2017 where recommendations were made to grant permission for the raising of the construction of the Multi-Level Parking.

The aforesaid letter from the Ministry of Culture, Government of India has been filed as Annexure-2 to the affidavit of the Lucknow Development Authority. The said recommendations were communicated to the competent authority namely the Commissioner who has communicated the grant of permission to the Lucknow Development Authority in terms of Rule 12 of the Ancient Monuments & Archaeological Sites and Remains (Framing of Heritage bye laws and other functioning of Competent Authority) rules 2011. It is on the strength of this permission that has been placed on record that the Lucknow Development Authority prays for vacating the interim order passed on 24.8.2016 and for dismissing the Writ Petition.

The attention of the Court has been invited to the provisions of Section 20C read with Section 20D of the 1958 Act Rules 9 to 11 of the 2011 Rules. On a perusal thereof, it is evident that the National Monuments Authority is empowered to entertain the applications filed and then recommend the grant of permission or otherwise. The said recommendation has to be implemented through the competent authority.

The competent authority has been defined under Section 2(db) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958. The definition clause clearly defines the competent authority which includes the rank of a Divisional Commissioner as well.

In the instant case, the recommending authority namely the National Monuments Authority has resolved to grant permission and the same has been communicated by the competent authority, the Divisional Commissioner as defined herein above on 27.2.2017. Thus, as on date there is a valid permission for the raising of the construction of the Multi-Level Parking as proposed by the Lucknow Development Authority.

Shri Yashovardhan Swarup, learned counsel for the petitioner prays that the

matter be taken up tomorrow to enable him to further address the Court.

Put up tomorrow i.e. 22.3.2017."

4. Shri Yashovardhan Swarup contends that the raising of the Multi-Level Parking by the Lucknow Development Authority should not in any way damage the site and therefore, appropriate steps should be taken so as to ensure that the raising of the construction does not in any way affect the archaeological sites in question.

5. We have considered the submissions raised and in view of the fact since the competent authority has now granted permission on 27.02.2017, the continuance of the restrain order passed by us is no longer sustainable. We accordingly vacate the interim order dated 24th August, 2016 and dispose off this writ petition with a direction to the authorities to ensure that the permission granted by the Competent Authority is complied with in its entirety while proceeding to raise the construction of the Multi-Level Parking.

6. Disposed off with the aforesaid direction.