
(2002) 09 DEL CK 0272

In the Delhi High Court

Case No : Civil Writ Petition No. 3319 of 2002

Vishwanath Pratap Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Rules, 1959 — Rule 32
Ancient Monuments Preservation Act, 1904 — Section 10, 2(1), 3, 4
Constitution of India, 1950 — Article 226, 49
States Reorganisation Act, 1956 — Section 126

Citation : (2002) 09 DEL CK 0272

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : K.T.S. Tulsi, R.S. Suri, V.K. Shailendra, Vikas Pahwa and Hari Pillai, for the Appellant; Navin Chawla and Monika Arora for Respondents 1 and 6, Mukul Rohtagi, ASG and Rajeev Sharma, for Respondent No. 2, V.K. Shali, for Respondents 3 and 4 and Ravinder Sethi Ravi Gupta and Reema Kalra for R-5, for the Respondent

Judgement

A.K. Sikri, J.—The petitioner has preferred this writ petition which is in the nature of Public Interest Litigation. He knocks the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Although a number of reliefs are prayed in the writ petition, these can be compartmentalised in twin categories i.e.

(i) First prayer is for cancelling of lease of 4.7 acres of prime property in the Siri Fort Institutional area granted by Delhi Development Authority/Respondent No. 2 in favor of M/s. Asiad Tower/Jhankar Banquet (Respondent No. 5). Although at the time of arguments it is the construction activity in that vicinity by respondent No. 5 which was the plank of attack.

(ii) Second relief relates to unauthorised building of a palatial Officers Club of DDA in the same area and prayer is made that it should not be used as a club or be not allowed to be rented for marriages and parties.

2. The main concern of the petitioner is to protect the historically important Siri Fort wall existing in that area which is declared a protected monument. In that context the construction activities by respondent No. 2 & respondent No. 5 are challenged as illegal. As a sequitur, the petitioner also demands that the Archeological Survey of India (ASI) should be directed to take all adequate steps to protect this heritage.

3. The petitioner has alleged that the lease given to Respondent No. 5 solely for commercial purposes is in violation of various laws, it is granted for a meagre amount of Rs. 2.18 crores whereas the actual land rates in the area would be several times over. We may mention at this stage that although a prayer is made to the effect that an enquiry be ordered into this aspect as to how the lease was given for such a paltry amount, this aspect was not argued at the time of hearing of the case.

4. The petition makes detailed narration of the allegations that the respondent No. 5 by holding large noisy late night parties in the banquet, has made life miserable for the local residents of the area, who mainly constitute individuals and institutions engaged in arts, culture, literary and other social as well as charitable activities. It is alleged that the manner in which DDA has flouted the powers vested in it is further apparent from the fact that they have unauthorisedly build a palatial Officers Club in the same area, again on Green land, and are renting it out for marriages and parties where music is played from huge loudspeakers and amplifiers and the loud noise from these parties makes it unbearable for the local residents of the neighborhood. This is inspire of the fact that the Ministry of Urban Development (Respondent No. 1) vide its order dated 30.1.2001 had categorically directed that no marriage party whatsoever was to be allowed in the Club and further had directed the DDA to produce all the records of the case as to how the DDA Officers Club was sanctioned and under what authority or resolution was the same permitted. In this context, it is important to note that the petitioner alleges the Club has been built on a historical mound from which artifacts of ancient civilisation were dug out, when DDA was digging the foundations for its Club. However, the historical importance of a place apparently does not fit in the scheme of things as far as DDA is concerned and as such they went ahead unabashedly and completed the construction of its palatial Club.

5. Highlighting the importance of the historical monument, it is stated that the Siri Fort Wall signifies the moment of triumph in the glorious past of the Indian History. The epic story of the triumph of our country is engraved int he stones of the historical Siri Fort Wall. The stones of this wall vividly remember how the Mongols came to India in wave after wave for about a century carrying out terrifying, murderous, and barbaric invasion and how the Mongol attacks were repulsed because of this historical Siri Fort Wall and the brave army which was defending it. The Mongols who had conquered large part of Asia, China and Europe were pushed back at Siri Fort. China had to build the Great Wall in order

to defend itself from the repeated Mongol invasions, but India's Siri Fort Wall upheld the honour of India by defeating the Mongols. The Great Wall of Siri Fort should be as important to us as the Great Wall of China is for the Chinese. Siri Fort Wall is more significant because it is the only place in the whole of Asia and Europe where Mongols were actually defeated and their armies turned back in total humiliation. The final defeat was in Siri the Capital of Alauddin Khilji, at the precise location of Siri Fort.

6. The petitioner further states with some anguish that the conduct of the Delhi Development Authority will show how the Capital of India has been in the past few decades, systematically and gradually being vandalized. The land of Delhi is in Trust with the DDA. The functioning of the DDA is to model the Capital and convert it into a better city. On the contrary the DDA, in clear violation of the Master Plan and ignoring the Constitutional imperative envisaged therein not only to ensure and safeguard proper environment but also on imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment, has illegally encroached upon the green land clearly and without any ambiguity shown as Green in the Master Plan, giving it on lease at a very meager price for commercial use, and using Green Land of Delhi to build a palatial club for its officers. The public has a right to expect from the Government that certain Land & Natural Resources areas should retain their natural characteristics which have great importance to the people, and it would be unjustified to make them a subject of private ownership.

7. Dubbing the aforesaid activities as illegal acts of the DDA officials, the petitioner describes the same as in clear violation of "Doctrine of Public Trust". Expatiating this doctrine the petitioner wants to remind DDA that the doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to protect their use for private ownership on commercial purpose. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea shore, running water, forests in the form of green belts in the towns and ecologically fragile lands. The Government as a trustee is under a legal obligation to protect the natural resources, which are meant for public and cannot be converted into private ownership. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial, or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the same resources.

8. The petition further narrates that the area in question is primarily inhabited by institutions/NGOs engaged in arts, cultural literary activities, charitable and social causes etc. as well as lakhs of residents in the neighbouring Asiad Village. According to the petitioner, neighbours of these institutions and residents of these areas have been complaining regularly to the concerned officials about the need for protection of this Siri Fort Wall and its surrounding area. The defiant

attitude adopted by the respondents is apparent from the fact that they have started treating the entire area as their own property in spite of the fact that the said area is clearly earmarked as Public Green Land. By employing security guards in and around the area and cordoning the same, they make sure that general public is not even allowed to peep into the premises.

9. In fact while digging up the foundation of this club, centuries-old artifacts, pieces of old pottery and other evidences of ancient civilization were found and although initially DDA maintained that the monument and the surrounding couple of acres of land had been handed over to Archeological survey of India and digging stopped for a few months but thereafter it again started the construction activities. In the process the DDA cut hundreds of very old trees from this place. There was a huge green ocean of quivering leaves on innumerable treetops all around with hundreds of peacocks dancing around till the end of the 80s had been converted into a concrete by making palatial club and there by mercilessly cutting all those trees. The petition further painstakingly enumerates various steps taken to stop the use and unauthorised construction undertaken by licensee Asia Tower/Jhankar Banquet as well as DDA Club which includes numerous letters to high dignitaries including Prime Minister of India, Minister for Urban Development, Members of Parliament, Lt. Governor, Chief Vigilance Commissioner etc. According to the petitioner, a Committee was appointed by the Vice-Chairman, DDA when Chief Vigilance Commissioner asked him to look into the matter. This Committee examined the site in detail and vide its report dated 10.5.2000 came to the conclusion that on a physical survey of the site, it was revealed that the licensee had made constructions over ten times in excess of the permissible limits. In other words, instead of the permissible limit of 167.30 sq. mtrs., the total area covered by the licensee came to over 1797 sq. mtrs. Besides, in clear violation of the rules which do not permit any kind of permanent structure being built for parties or for catering purposes, it was revealed that the licensee had built several permanent structures which were against the rules. Besides the above, the Committee also noticed several other violations by the licensee. The Committee vide its report recommended that the licensee should be asked to remove all structures in excess of the permissible covered area of 167.30 sq. mtrs and also strictly abide by the condition of only temporary structures being constructed besides obtaining the approval of DDA with regard to any such construction.

10. It is also stated that on 8.7.2000 the Union Minister for Urban Development had written to the neighbouring institutions informing that Ministry had taken a decision to preserve the Siri Fort Wall and the area would be landscaped and protected. A promise was held out stating that the matter regarding allotment of green land around the tower restaurant would be examined and instructions would be issued to DDA to ensure that the DDA Club is used only in a manner which subserves public purpose and the club would be restricted to the children of the officials and not of any relation or private parties. Although thereafter enquiry was assigned to Vigilance Officer of Urban Development Ministry, the

petitioner is not aware of as to what happened to the said enquiry. As he did not find any change in the situation, he was compelled to file the present writ petition.

11. The legal submissions which were made by Mr. K.T.S. Tulsi, learned senior advocate appearing for the petitioner in support of the reliefs claimed can be paraphrased thus:

i) The area in question was a Green Belt area and the Master Plan of Delhi shows the area as Green land. It was being shown and used as District Park. No commercial activity could be permitted in such an area in violation of the Master Plan of Delhi and Zonal Plan of the area. The user by the Asiad Tower as well as DDA Club was, Therefore, clearly contrary to aforesaid plans and thus violated the provisions of DDA Act. The activities of Asiad Tower and DDA Club were creating noise pollution and the same had also been disturbing the ecology of the area and destroyed the green environment which was not permitted. The user of the park for such an activity was clearly denounced in no uncertain terms by the Supreme Court in various pronouncements and the Supreme Court came down the authorities heavily while banning such activities. The learned counsel in support of this plea, referred to the following judgments:

- a) M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others,
- b) M.C. Mehta Vs. Kamal Nath and Others,
- c) Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others,
- d) Virender Gaur and Others Vs. State of Haryana and Others,
- e) Bangalore Medical Trust Vs. B.S. Muddappa and others,

ii) The Siri Fort Wall was a protected monument declared as such vide Notification dated 6.8.1999 under the provisions of Ancient Monument Act, 1904. This monument could not be vandalized by anybody much less the Government/statutory authorities like DDA which was saddled with statutory duties to save the land from vandalize and in stead of doing so it was itself vandalizing these monuments.

iii) Furthermore as per the Notification dated 4.7.1992 issued under Ancient Monument Act and Archeological Survey of India Act, 1958 and Rules framed there under, no construction activity was permissible within 100 mtrs of the protected monument and activities beyond 100 mtrs and within 200 mtrs could be undertaken only with the permission of Archeological Survey of India. However, in violation of this Notification the construction activities were carried out and were being carried out in an around Asiad Tower as well as DDA Club.

12. The petitioner has arrayed Union of India through Secretary, Ministry of Urban Development as Respondent No. 1, Delhi Development Authority as Respondent No. 2, Government of NCT of Delhi as Respondent No. 3, Commissioner of Police as Respondent No. 4, Asiad Tower/Jhankar Banquet as

Respondent No. 5, Archeological Survey of India (ASI) as Respondent No. 6 and Sir fort Institutional Area as Respondent No. 7. Out of these counter-affidavits are filed by Union of India, DDA, Commissioner of Police, Asiad Tower and Archeological Survey of India.

13. We may first take stand of the ASI because ASI has supported the cause of the petitioner and, Therefore, by describing the same in the first instance the continuity of the case as projected by the petitioner shall be maintained. As per ASI the property which is leased to Asiad Tower (Jhankar Banquet) and DDA Officer Club falls within the prohibited/regulated area of protected stretch of the historical Siri Fort Wall which is declared as a protected monument of national importance by Gazette Notification No. 4759-Edu dated 6/8/1919. This according to ASI protected stretch of fortification wall falling under the central protection which is located between the protected stretch of the historical Siri Fort Wall and Bulbul-ki-Mosque. It is further stated that in the recent past the respondent Nos. 5 had unauthorisedly built permanent structures for commercial use within the prohibited/regulated area of centrally protected monument and has also extended their boundary made of bamboo sticks adjacent to the remnants of historical Siri Fort Wall. Recently he constructed an underground fire tank near Asiad Tower without obtaining "No Objection Certificate" from the Director General, ASI and has also a proposal for construction of a permanent kitchen adjacent to already constructed underground fire-tank which also falls within the prohibited area of Bulbul-ki-Mosque, a centrally protected monument. Huge Shamyanas are also pitched up at the site for marriage and other functions and a part of the historically important protected land of Siri Fort is being used as car parking for the guests/visitors. The construction of aforesaid permanent structures undertaken by the respondent No. 5 within the prohibited/regulated area of the centrally protected monument was in contravention of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, Rules 1959 and notification 1992 and, Therefore, the field staff of the ASI had filed FIR against the offender. The ASI has also served upon show cause notices to Respondent No. 5, with the request to stop the illegal construction immediately.

14. Insofar as Respondent No. 4, namely, Commissioner of Police is concerned, its response is by way of affidavit of Shri P. Kamraj, DCP (South), Hauz Khas, New Delhi which relates only to noise pollution. What is stated is that the Lt. Governor of Delhi has already issued a notification prohibiting the use of loud speakers or music system under Environment Protection Act which has been given due publicity by the Delhi Police. It is further stated that as and when complaints regarding violation of all these notifications is received immediate action is taken to ensure that the blaring loud speaker or music is stopped. It is further mentioned that Delhi Police is trying its utmost to ensure that peace and tranquility of the locality is not disturbed on account of noise pollution. However, this affidavit is totally general in nature and does not specifically deal with the allegations of noise created by the activities of the Asia Tower and DDA Officers Club and, Therefore, is of no help.

15. Insofar as stands of the DDA and respondent No. 5 are concerned, we shall notice the same along with the contentions of their counsel in the matter while dealing with the twin problems.

16. It needs no emphasis to mention that protection and preservation of our cultural property against the dangers of damage and destruction resulting from theft, vandalism, clandestine excavations and illicit traffic is our sacred duty, which we owe to posterity. Cultural heritage along with environment is very essential to the well being and to the enjoyment of man's basic rights- even the right to life itself. This justifies on the statute book, the aforesaid legislations aimed at taking all possible measures to stop the impoverishment of the cultural heritage. The concern for protection of such heritage is not limited to India. Governments of most of the countries in the world today are addressing themselves to this problem. The entire humanity is anxious about it. Documents published by UNESCO also reveal and stress this fact that some of the recommendations and Conventions brought out by it after 1950 clearly demonstrate this aspect as can be seen from the following:

(i) Convention for, Protection of Cultural Property in the Event of Armed Conflict (1953).

(ii) Recommendation of International Principles Applicable to Archaeological Excavations (1956).

(iii) Recommendation on the Most Effective Means of Rendering Museums to everyone (1960).

(iv) Recommendation on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of ownership of Cultural Property (1964).

(v) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of ownership of Cultural Property (1970).

(vi) Recommendation for the Protection of Movable Cultural Property (1979).

17. When the people of this country gave the Constitution to themselves, adequate provisions were made to protect historical monuments and heritage. Article 49 of the Constitution of India imposes an obligation upon the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

18. The Constitution further delicates the function for both Centre and the State to enact laws in this field by allocating as per the Seventh Schedule thereof which is as follows:

List I (Union List), item 67: Ancient and historical monuments and records, and archeological sites and remains declared by or under law by Parliament to be of national importance.

List II (State List), item 12: Libraries, museums and other similar institutions controlled or financed by the states; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance. (The Indian Treasure Trove Act, 1878 also included in the State List).

List III (Concurrent List), item 40; Archeological sites and remains other than those declared by or under law made by Parliament to be of national importance.

19. It may be mentioned that in the beginning of 20th Century and much before the Constitution was promulgated the Ancient Monuments Preservation Act, 1904 was enacted to provide for the preservation of ancient monuments and the objects of archeological, historical or artistic interest. Section 2(1) thereof defines Ancient Monument in the following terms:

"ancient monument" means any structure, erection or monuments, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archeological or artistic interest, or any remains thereof, and includes-

- (a) the site of an ancient monument;
- (b) 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
- (c) the means of access to and convenient inspection of an ancient monument;

Under Section 3 of the Act Central Government may, by notification in the Official Gazette declare "Ancient Monument" to be a protected monument within the meaning of the Act.

Section 4 empowers the Collector to purchase or take a lease of any protected monument of course with the sanction of the Central Government.

Section 10 authorises the Central Government to direct the State Government to acquire such protected monument if the Central Government apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay.

20. However, after 1950, in fulfillment of the provisions of the Constitution, the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 was enacted on 28th November, 1951. According to this Act, all ancient and historical monuments and all archaeological sites and remains declared under Ancient Monuments Preservation Act, 1904, were re-declared as monuments and archaeological sites of national importance. About 450 monuments and sites in the Part B States were included in this national list. Subsequently by Section 126 of the States Reorganisation Act, 1956, some more monuments and archaeological sites were declared as of national importance. With a view to bringing the Ancient Monuments Preservation Act, 1904 in line with the Constitutional provisions and also to

conform it with the new developments in the changed situation, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 was enacted on 28th August, 1958 and the Act along with the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 came into force from 15 October, 1959.

21. A notification dated 15.5.1991 had been issued under Rule 32 of the Ancient Monuments and Archeological Sites and Remains Rules, 1959 by the Central Government whereby an area up to 100 mtrs from the protected limit of the monument has been declared as prohibited area for any construction activity and further up to 200 mtrs of such protected monument the area is declared as regulated area in which construction can be allowed only after getting permission from the Directorate General, Archeological Survey of India.

22. Keeping in view the aforesaid legal provisions contained in various Acts, let us examine the twin issues brought out by the petitioner in the present writ petition.

No. 1 Asiad Tower Restaurant:

23. First we take note of certain background facts regarding the construction of Asia Tower Restaurant. It is stated in the counter-affidavit of the DDA which remains substantially undisputed that since the Asiad Village was built to provide residential facilities to a large number of persons, a source of water supply to the same was required. Accordingly, it was decided to build an overhead water tank, which would be the source of water supply to the Asiad Village. Subsequently a view was taken that the overhead water tank would be looking ugly and therefore, it would be better to camouflage it by a tower restaurant. Accordingly, it was proposed to build an overhead tank cum view tower-cum-restaurant. This proposal was accepted by the Project Board in its meetings held on 3.1.1981/19.1.1981. The proposal was also greatly appreciated by the Urban Arts Commission in its meeting held on 15.1.1981. Further, the affidavit states, the tower which subsequently came to be known as Tower Restaurant came to be built in 1982 at a cost of Rs. 72 lacs, on a lot of land which, under the then applicable 1962 Master Plan was earmarked for recreational use. In terms of the said Master Plan the land earmarked for recreational use could be used for the purposes such as outdoor cinema, restaurant etc. subject to permission from the competent authority i.e. DDA and that a bare perusal of the above said extract from the Master Plan shows that the use of the land for the restaurant as approved by the Project Board, which had been delegated full powers of the authority was in consonance with provisions of the Master Plan. Further it is stated that sometimes in the year 1984, the Tower Restaurant was allotted at a monthly license fee of Rs. 50,000/- or 5% of gross sales whichever was higher, for a period of five years, which was extendable by another five years. Possession was handed over to the licensee in 1984. The allotment was surrendered in July 1988 and the possession of the Tower Restaurant reverted to DDA.

24. Thereafter, tenders were floated for, disposing of the Tower Restaurant in October, 1989 and April, 1990 but the same could not materialise for one reason or the other. After that even efforts were made to offer this restaurant to Public Sector Tourism Corporations of various states but the response was lukewarm. In these circumstances, it was ultimately decided by the DDA vide Resolution dated 23.3.1993 to auction this restaurant on lease hold basis for a period of 30 years with the surrounding land which could be given on license fee basis. Tenders were invited in November, 1996 and pursuant thereto bid of M/s. Jhankar Banquet which was for Rs. 2.20 crores (against the reserve price of Rs. 1.88 crores) and annual license fee of Rs. 31 lacs per year to be enhanced at the rate of 20% every three years was accepted after taking approval of the Lt. Governor. There upon possession of the Tower Restaurant along with adjoining land was handed over to M/s. Jhankar Banquet in July, 1997.

25. From the aforesaid narration of facts, one thing is clear that the Tower Restaurant is in existence for more than 20 years and in any case it was constructed much before the 1992 notification. The land in question also belongs to DDA. Therefore, action of the DDA in giving the said Tower Restaurant to M/s. Jhankar Banquet cannot be faulted with. However, any construction activity by the Jhankar Banquet which is contrary to 1992 notification cannot be permitted.

26. At this stage we may note that as per ASI's affidavit it has given show cause notice to the respondent No. 5 with request to stop illegal construction immediately. On this basis Mr. Mukul Rohtagi, learned Additional Solicitor General of India who appeared for DDA argued that since the matter was still at show cause stage, this court should not interfere there with. It was also submitted that the use of the land was in accordance with Zonal Development Plan. His further submission was that 1992 notification barred only permanent construction and not temporary structure. His further submission was that when-ever the respondent No. 5 made any permanent construction action was taken and such unauthorized structure removed. Even Mr. Ravinder Sethi, learned senior counsel appearing for respondent No. 5 submitted that respondent No. 5 was not making any permanent construction and only temporary structures were made. It was also submitted that the use of tower for marriage parties etc. was not done for more than 10 days in a month in consonance with the direction of the Supreme Court.

27. Mr. Ravinder Sethi raised two preliminary objections to the maintainability of the petition, namely,;

(A) the petition was a malafide attempt and the petitioner had not come to court with clean hands inasmuch as another petition filed by the residents of the area was pending adjudication and the petitioner, in spite of knowing fully well about the pendency of that petition had concealed this fact in the present petition.

(B) The very basis of the petition was unfounded inasmuch as the so called attempt of the petitioner was to protect the heritage i.e. Siri For Wall but no such

wall was in existence and, Therefore, the question of protection thereof did not arise. He submitted that in this entire area various Government Offices had been constructed long ago and the wall had been, demolished. No such wall was visible except some ruins thereof at certain places and, Therefore, protection of wall was a bogey raised to harass the respondent No. 5 who had, after taking the Tower Restaurant on lease in the year 1997, invested crores of rupees. The writ petition was filed belatedly after a gap of 5 years after respondent No. 5 had taken the said Restaurant and MOU signed in respect thereof.

28. It may be mentioned at this stage itself that Mr. Mukul Rohtagi even tried to argue that the notification of 1992 did not apply in the instant case inasmuch as this notification was issued under 1959 Rules framed under Ancient Monument Act and Archeological Survey of India Act, 1958 whereas the Sir fort Wall was declared as protected monument under Ancient Monuments Preservation Act, 1904. There was no notification issued under the Act of 1904 prescribing any restriction with respect to any construction within stipulated area. He referred to provisions of both the Acts i.e. Sections 3 and 20 of Ancient Monuments Preservation Act, 1904 and Section 2(a) and 2(1) of the Ancient Monument Act and Archeological Survey of India Act, 1958 to buttress his submission.

29. Mr. K.T.S. Tulsi, learned counsel appearing for the petitioner strongly refuted the stand of respondent No. 5 as well as DDA submitting that it was false to allege that no permanent structures were being constructed and what was constructed was temporary structure.

30. Before any direction can be given in this case, following aspects have first to be determined:

- (a) Sir fort Wall at the site still exists which needs protection.
- (b) Notification of 1992 applies in the instant case.
- (c) Nature of construction activity.

31. As already noted above, the ASI had issued show cause notice to the respondent No. 5 objecting to certain constructions. Since the matter is at show cause stage and ASI has not taken any decision and since we have no material to find out as to whether the wall in question still exists or not (we may point out that certain photographs were filed by both sides on the basis of which the petitioner tried to demonstrate that wall is still in existence and respondents attempted to show that no such wall was there and only some ruins had been left, this being a disputed question needs to be determined by the competent authority, namely, ASI by making spot inspection.), it would be appropriate if such an exercise is done by ASI in the first instance. It would be open for the respondent Nos. 2 and 5 to file further replies taking all contentions which are taken before us and on the basis of the material on record and legal submissions made the ASI should pass appropriate orders after giving due opportunities of hearing to DDA and respondent No. 5 within a period of 8 weeks from the date of

receipt of a copy of this order. Needless to mention that enquiry will also relate to the aspect as to whether structures made by respondent No. 5 are temporary or permanent. It is possible that some of the constructions may be temporary but other permanent. In case ASI comes to the conclusion that there exists a Sir fort Wall which needs to be protected and further that 1992 notification is applicable and that some constructions are carried out by the respondent No. 5 in violation of the said notification, the ASI shall pass appropriate orders for demolition of those constructions. It also goes without saying that in case respondent No. 5 and DDA are aggrieved by any such order which is eventually passed by the ASI, they shall be at liberty to avail such remedies as are available to them in law.

32. If the wall already stands demolished, we can do nothing but to express out shock at the way in which ancient heritage of the country is sought to be protected by the concerned authorities who took no care in the matter and allowed all construction activities in the vicinity to take this after demolishing the same. We can only say that ASI has been failing in its duty and has woken up from slumbers after an attempt has been done.

No. 2 DDA OFFICERS CLUB:

33. There is no denial of the fact that the DDA Officers Club was constructed in the year 1997. It is also not denied that the said Club is within 100 mtrs of the historical, monument protected by the Notification of 1919. However, it is stated by the DDA that the Master Plan applicable to this construction is the Master Plan of 2001 as per which the area is designated as P-3 land which is meant for use as play ground, out door stadium, in door game stadium hall, swimming pool, recreation club, residential flat, boarding and lodging house, bank, local Government office, library, sports training centre, auditorium, police post, fire post, post & telegraph office etc. On that basis DDA argues that recreational club is clearly one of the permissible land uses under the Master Plan. In the affidavit filed on behalf of DDA it is further pointed out that certain directions have been issued by the Ministry of Urban Affairs and Employment regarding the use of the Club which are contained in letter dated 19.3.2001 and scrupulously followed by the DDA. It is also stated that in compliance with the judgment of Supreme Court w.e.f. March, 2001 onward only 8 functions have been held in the club. Therefore, allegations of the club having become an unofficial Barat Ghar and parties being held everyday are denied. In answer to the allegation of construction of this club within the vicinity of protected monument in the counter-affidavit, it is admitted by the DDA that the club was constructed in 1997. However, what is sought to be argued is that the Master Plan applicable to the said construction is the Master Plan of 2001. The land on which the club stands is designated as P-3 land in the Master Plan 2001 which is meant for use as play ground, out door stadium, in door game stadium hall, swimming pool, recreational club, residential flat, boarding and lodging house, bank, local Government office, library, sports training centre, auditorium, police post, fire post, post & telegraph office etc. A perusal of Master Plan 2001 would show that

a recreational club is clearly one of the permissible land uses under the Master Plan and as such it cannot be said that the construction of the club is vocative of the provisions of the Master Plan. Further the allegation that the club has become a Barat Ghar and is being used daily for marriages and parties is incorrect. The club was envisaged as a forum for social meetings/gatherings for exchange of ideas. It was seen that unlike other large institutions DDA did not have a club of its own. It was Therefore decided to set up a club complex adjacent to the sports complex. However, vide Resolution No. 14 of 2002, it has been decided to convert the space into a HRD institute. In terms of the said Resolution, the club shall be used for imparting training to officers, organising seminars etc. and for recreational purposes. It is further stated that certain directions have been issued by the Ministry of Urban Affairs and Employment regarding the use of the club. The said directions are being complied with a letter and spirit. The instructions issued by the Ministry were contained in letter dated 19.3.2001 and that w.e.f. March, 2001 onwards only 8 functions have been held in the club. The same is evident from a statement showing a number of functions held in the club from 1st March onwards. The said statement clearly demonstrates that the allegation of the club having become an unofficial Barat Ghar and parties being held every day is incorrect. The affidavit further states that another allegation made in the petition is that a historic site has been destroyed to build the club which allegation is also incorrect. The club building stands at a distance of about 200 feet from the historic wall. The club is not built on any historic mound. The DDA in its endeavor to protect the site has already worked out a plan in consultation with ASI to beautify the area by exposition/conservation of the wall. For this purpose an amount of Rs. 36.91 lacs has been sanctioned.

34. We may notice that the DDA has not denied the existence of this historic wall although Respondent No. 5 has stoutly denied it. Even certain photographs filed gave the impression that some ruins are left (at least at places shown in those photographs). Therefore, we have ordered enquiry into this aspect. It is obvious that the club has been constructed within 100 mtrs from the site of the historic wall. It is also obvious from the aforesaid reply that the club was constructed in the year 1997 i.e. after 1992 notification. Thus if the said notification is applicable and the monument exists, construction of the club would clearly be in violation of the said notification. In this view of the matter the same directions which are given to ASI in respect of Asia Tower Restaurant shall apply in the case of Officers Club as well. It is, Therefore, directed that ASI shall examine the matter relating to DDA Officers Club (we say so because in its affidavit ASI has not stated anything about the Officers Club and no action in respect of this DDA Officers Club is contemplated). After examining the matter if ASI is of the prima facie opinion that the construction was in violation of the law, it shall issue show cause notice to the DDA giving opportunity to DDA of being heard and proceed in the same manner as per the direction given in respect of Asiad Tower Restaurant.

35. Keeping in view the aforesaid course of action taken in the matter, it is not

necessary to deal with various judgments quoted by the petitioner which relates to conversion of parks. We may note that in the present case the Zonal Development Plan of the area has itself earmarked the area for creational purposes and, Therefore, these judgments may not have application in this case.

36. The writ petition is disposed of with the aforesaid directions.

37. Before parting we are compelled to make certain comments. Keeping in view the objective of planned development of Delhi, Delhi Development Act was enacted in the year 1957 i.e. within 10 years of attaining independence and within 7 years of promulgation of the Constitution. The purpose was the orderly development of the city. With this aim in mind Master Plan for Delhi u/s 7 of the DDA Act and Zonal Development Plans for various zones u/s 8 of the said Act are prepared. The authorities under the Act are given the duty to ensure the development of the Delhi in accordance with these plans. The local bodies are empowered to develop lands, to provide basic amenities, to dispose of developed lands, to put up complexes-residential and commercial, according to the needs and aspirations of the people. However, influx of people from all over the country into Delhi has posed stupendous housing problem. The city has, Therefore, witnessed rampant construction activity, legal as well as illegal. More and more areas were earmarked for building commercial complexes and offices as well as residential colonies. In the process many times heritage of the city has also been sacrificed. In fact at times authorities did not realise that the protected monuments were being vandalized. Delhi, the locus of socio-economic and political life of India, is a symbol of ancient values and present aspirations. It has a distinct personality imbibed in it. It has the history of centuries. Presently, growing at an unprecedented pace, the city must be equipped to face contemporary challenges. It should be able to integrate its elegant past as well as the modern developments into an organic whole. It needs fusion of cultural and architecture heritage with modern developments. If it loses heritage, Delhi loses its soul. There has to be sustainable development.

38. However, people of this country have not taken good care of its history and it is true in respect of Delhi also. In this case itself the respondents are stating that Sir fort Wall does not exist any more and many years ago in this area office complexes were constructed and in the process the wall got destroyed. It is claimed that what is left are only some ruins. The news keeps appearing about vandalizing other protected monuments also. If that is correct it only depicts a sorry state of affairs. The following remarks of Mr. N.A. Palkhiwala from his book "We the People" immediately flash across the mind:

"It has been said the Nature is a wonderful handicapper: to some women it gives the beauty of Madonna and the brains of a linnet. I am prepared to believe that this is not true of the fair sex, but I am not prepared to believe that this is not true of nationas. To a country like Japan Nature gives the handicap of almost total absence of natural resources but gives it a sense of national devotion which enables the country to be one of the most prosperous and powerful in the world.

To some other countries it gives the gift of oil but without upgraded human resources. To India Nature has given immense intelligence and skills but no sense of public duty, discipline or dedication".

39. At an other place he remarks by saying: "as a nation, we have scant concern for peoples good and far too few citizens are interested in public welfare. We are as careless about public property as we are careful about our own property" and adds to this the following harsh reality: "we are very poor at maintenance - whether it is the maintenance of our power plants or factories, historical monuments or buildings, cities or universities. So far from establishing elitist educational institutions, we have downgraded and devalued the fine universities which existed when we became a republic. In those days college buildings did not leak-nor did examination papers. The Bombay, Calcutta and Madras Universities are 125 years old. Nature has kindly denied us a sense of history and Therefore we are saved the anguish of realizing the contrast between what these educational institutions were during the first 100 years and what they have been reduced to in the last 25".

40. The concluding remarks made in respect of educational institutions amply apply to historic monuments as well. While developing Delhi we could not carry out planned development notwithstanding Delhi Development Act or Master Plan prepared there under. May be, even now we awake from slumber and show greater awareness about legislative measures as tools to protect cultural legacy from decay and despoliation.