

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

OWP No. 857/2013

IA No. 1184/2013

CM No. 5436/2025

Date of Pronouncement: 11.08.2026

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Rattan Chand

.... Petitioner(s)/Appellant(s)

Through:- Mr. Achal Sharma, Advocate with
Ms. Arti Devi, Advocate &
Mr. Keshav Verma, Advocate

V/s

State of J&K and others

.... Respondent(s)

Through :- Mr. Adarsh Bhagat, GA for R-1 & 2
Ms. Monika Kohli, Sr.AAG (Sr. Advocate) with
Ms. Nazia Fazal, Assisting Counsel for R-3 & 4

Coram: HON'BLE MR. JUSTICE SANJAY PARIHAR

ORDER

1. The case set up by the petitioner is that he is the owner in possession of two parcels of land situated at Hazuri Bagh, Tehsil and District Jammu: one measuring 2 kanals and 13 marlas, Khasra No. 141, and the other measuring 3 kanals and 4 marlas, Khasra No. 144 Min. According to the petitioner, the aforesaid parcels have been consolidated into a single plot by raising a common boundary wall. It is averred that one Balbir Singh had instituted a writ petition in the nature of Public Interest Litigation, seeking directions to the respondents therein to ensure preservation of the historic Gole Mahal, Hazuri Bagh, Talab Tillo, Jammu, on the premise that the same was an ancient building/monument. The Division Bench of this Court treated the said writ petition as a Public Interest Litigation and,

during its pendency, directed maintenance of status quo with respect to construction over the land in question.

2. The petitioner further avers that, during the pendency of the aforesaid proceedings, the respondents issued SRO 263 dated 20.05.2013, whereby the property of the petitioner, upon which the old structure stood, came to be declared a heritage site under the provisions of the Jammu and Kashmir Heritage Conservation and Preservation Act, 2010. The petitioner assails the said notification, inter alia, on the ground that it was issued without affording him an opportunity of being heard. It is further pleaded that, even prior to the collapse of the structure, several alterations and construction works had been carried out therein by the erstwhile owner from whom the petitioner subsequently purchased the property. According to the petitioner, the structure, though old, possessed no historical or cultural significance so as to bring it within the ambit of the aforesaid Act. On these premises, the petitioner seeks quashment of SRO 263 dated 20.05.2013.
3. It is further pleaded by the petitioner that SRO 263 dated 20.05.2013 has been issued mechanically and without proper application of mind and is, therefore, unsustainable both in law and on facts. According to him, having acquired a lawful right to own and possess the property, the impugned notification could not operate so as to deprive him of his right to use, enjoy and manage the same in accordance with law. The petitioner further asserts that he has already raised a residential house over the land in question.
4. The respondents have contested the writ petition. Their case, in substance, is that Gole Mahal, situated at Hazuri Bagh, Talab Tillo, Jammu, was used

as a farmhouse by late Maharaja Hari Singh and is stated to have subsequently been purchased by two persons, namely, the petitioner and one Surinder Kumar. The land appurtenant to the Haveli measures approximately 5 kanals and 17 marlas and falls under Khasra Nos. 141 and 144. According to the respondents, the complex represents a significant example of Dogra architecture, constructed with traditional mortar and lime, and, on account of its architectural and historical significance, became the subject matter of the aforesaid Public Interest Litigation. It is the further stand of the respondents that, having regard to the historical importance of the Haveli, the Government issued the impugned SRO declaring the property to be a heritage monument deserving conservation and preservation. The State Government is also stated to have taken up the matter with the Archaeological Survey of India with a view to having the site declared a historical monument under the applicable law relating to preservation of ancient monuments. The respondents maintain that the Administrative Department duly examined the matter and issued the impugned notification only after following the prescribed procedure and due process of law.

5. The respondents further contend that the writ petition is liable to be dismissed as the petitioner failed to avail himself of the opportunity to object to the proposed declaration. It is asserted that, prior to issuance of the impugned SRO, a public notice was issued inviting objections from all concerned; however, the petitioner chose not to submit any objection thereto. According to the respondents, Gole Mahal is a building of considerable heritage significance and has validly been declared a protected heritage monument under the Jammu and Kashmir Heritage

Conservation and Preservation Act, 2010. Mere acquisition of ownership rights by the petitioner, it is contended, cannot by itself constitute a ground to invalidate the notification issued for the conservation and preservation of a property of historical and architectural importance.

6. The respondent-Director, Archives, Archaeology and Museums, J&K, Jammu, has filed objections to the writ petition. It is stated therein that, during inspection of the site, certain concrete structures were found to have been raised within the premises of the monument and within the prohibited area. It is further stated that a portion of the building was bulldozed by the petitioner in the year 2012, whereas the remaining round-shaped portion of the structure stood substantially obscured by plantation and bushes. The Director is stated to have recommended preservation of the structure as a heritage building.
7. After the respondents filed their reply to the writ petition, the petitioner filed a rejoinder. It is pleaded therein that the respondents had themselves constituted a committee comprising the Additional Deputy Commissioner (B), Jammu; Deputy Director, Archives, Archaeology and Museums, Jammu; and Executive Engineer, PWD (R&B), Jammu. The said Committee inspected the premises and submitted its inspection report dated 18.10.2010. As per the report, an area measuring 2 kanals and 13 marlas constituted the building area, and the structure standing thereon appeared to have been constructed during the reign of Maharaja Partap Singh. The property was subsequently stated to have been gifted by the royal family to Princess Deeraj Kumari, daughter of Maharaja Karan Singh, who thereafter transferred it to one Ganesh Dass. The property subsequently devolved upon Chander Shekher, who ultimately sold it to

the present petitioner, Rattan Chand. The petitioner is thus stated to be the owner of the land measuring 2 kanals and 13 marlas upon which the building in question stands.

8. Placing reliance upon the aforesaid inspection report dated 18.10.2010, learned counsel for the petitioner contended that the respondents' own record establishes that the building in question stood only upon land measuring 2 kanals and 13 marlas. It was, therefore, argued that the inclusion, under the impugned SRO, of the petitioner's other parcel of land, which according to him has no nexus with the structure in question, within the notified heritage site is arbitrary and contrary to law. It was further contended that, notwithstanding the respondents admitted position that the petitioner is the owner of the property, he was never associated with the proceedings culminating in issuance of the impugned notification nor afforded an effective opportunity of being heard.
9. It is pertinent to notice that, during the pendency of the writ petition, this Court directed the respondents to file a status report. Pursuant thereto, the Assistant Director, Archives, Archaeology and Museums, Jammu, inspected the site on 25.09.2021 and submitted a status report. The report records that certain concrete structures had been raised within the premises of the monument. It further records that a portion of the monument had been bulldozed in the year 2012, while the remaining round-shaped portion stood substantially covered by plantation and bushes. Certain portions of the structure, stated to be in a dilapidated condition, were, however, visible from the other side of the building. The status report further states that the factum of demolition of a part of the

building in the year 2012 had already been brought to the notice of this Court through objections filed on 17.09.2013.

10. During the course of hearing, learned counsel appearing for the respondents referred this Court to the relevant record and minutes of proceedings in support of the contention that due process prescribed under the Jammu and Kashmir Heritage Conservation and Preservation Act, 2010 had been duly followed before declaring Gole Mahal a heritage site. It was submitted that notices communicating the Government's intention to declare the building/property as a heritage site were duly published in newspapers and through other prescribed modes, inviting objections from all concerned within a period of 30 days. No objections having been received within the stipulated period, the competent authorities proceeded to recommend to the Government that the building be declared a heritage site. It was, thus, contended that the impugned decision was taken only after due consideration of the relevant material and upon compliance with the prescribed procedure.
11. Per contra, learned counsel for the petitioner contended that the Public Interest Litigation instituted by Balbir Singh was motivated by extraneous considerations. According to the petitioner, Balbir Singh was interested in purchasing the property from him and, upon the petitioner declining to sell the same, initiated the aforesaid proceedings. It was, therefore, sought to be contended that the very genesis of the proceedings leading to the impugned action was actuated by considerations other than the purported object of conservation and preservation of the property.
12. I have heard both the counsels at length and gone through the record of the case.

13. A perusal of the record produced by the respondents reveals that, in the year 2010, the then Deputy Director, Archives, Archaeology and Museums, Jammu, in response to communication dated 05.10.2010, brought to the notice of the Director, Archives, Archaeology and Museums, J&K, Srinagar, that the Haveli commonly known as "Gole Mahal" was in the possession of Rattan Chand of Shakti Nagar, Jammu, who was stated to have purchased the land from K.C. Group of Industries, Jammu. It was reported that the owner had commenced dismantling the upper roof of the Haveli on the ground that the structure was in a precarious condition and was likely to collapse, thereby posing a risk of damage. The communication further described the Haveli as a fine specimen of Dogra architecture, constructed with lime mortar and having an octagonal form. Considering the structure to be a heritage building whose original character deserved to be maintained, its preservation for posterity was recommended.
14. The record further indicates that the Director thereafter initiated the process for having the structure declared a State Protected Monument under the Jammu and Kashmir Ancient Monuments Preservation Act, Svt. 1977, read with the Amendment Act of 2010. In his recommendation dated 10.12.2012, the Director observed that the construction then existing at the site was in violation of the provisions of the Ancient Monuments Preservation Act and, accordingly, requested the Government to take immediate appropriate action in the matter. While the matter was thus under consideration before the competent authorities, one Balbir Singh approached this Court by way of a writ petition, which came to be treated

and registered as a Public Interest Litigation. The proceedings appear to have been prompted by reports in the print media that the owner had commenced dismantling the old structure of Gole Mahal. The petitioner therein sought preservation and protection of Gole Mahal, situated at Hazuri Bagh, Talab Tillo, Jammu, on the ground that it was an ancient heritage monument. During the pendency of the said proceedings, the authorities intervened and restrained the owner from carrying out further work at the site. The record indicates that, although the old structure continued to exist at that stage, a new concrete structure had been raised at a distance of approximately 100 metres therefrom. Taking note of the circumstances, the Division Bench, vide order dated 24.12.2012, directed maintenance of status quo. Subsequently, the respondent-State informed the Division Bench that the process for declaring the structure an ancient monument was under consideration, so it proceeded to close PIL.

15. The official noting on record further reveals that land measuring 2 kanals and 13 marlas, falling under Khasra No. 141, stood recorded in the name of Chander Shekhar pursuant to Mutation No. 438 dated 04.01.2010. The said parcel of land is recorded as housing an old building described as a *Baradari*. It is also borne out from the record that, in the year 2010, while correspondence concerning the property was being exchanged amongst the officers of the Archives, Archaeology and Museums Department, the Government constituted a committee to examine the matter. The Committee, upon inspection and consideration of the relevant record, found that the property was in the possession and lawful ownership of Rattan Chand, who had purchased the same from Chander Shekhar, the latter having inherited it from his father, Ganesh Dass. The Committee

described the building as a meticulously designed round-shaped structure having entrances on all four sides, namely, East, West, North and South, and exhibiting a combination of Mughal and Rajasthani architectural influences. The structure was further found to be well planned and constructed using traditional lime mortar and *surkhi*.

16. During the pendency of the present writ petition, officials of the Department of Archives, Archaeology and Museums, Jammu, again inspected the site on 25.09.2021. The inspection report records that the main entrance to the premises was found locked from outside and, there being no alternative access to the property, the inspecting officials could not enter the premises to verify its condition from within. The photographs appended to the status report, however, indicate that the structure has substantially deteriorated over the years and presently appears to be in a dilapidated and decaying condition.
17. The minutes and official notings placed on record further indicate that, as of the year 2012, the structure was considered to be more than 100 years old, although its precise date of construction could not be ascertained. On that basis, the authorities were of the view that the structure could fall within the ambit of the law governing preservation of ancient monuments. At the same time, having regard to its asserted historical and architectural significance, the authorities also considered it appropriate to examine its declaration as a heritage building under the Jammu and Kashmir Heritage Conservation and Preservation Act, 2010.
18. Before advertng to the provisions of the Jammu and Kashmir Heritage Conservation and Preservation Act, 2010, “the Act of 2010”, under which the impugned SRO has been issued, it would be apposite to first notice the

relevant provisions of the Jammu and Kashmir Ancient Monuments Preservation Act, Svt. 1977 (1920 A.D.) “hereafter the Act of 1920” particularly in view of the fact that the contemporaneous official record reflects that the authorities had initially considered preservation of the structure under the said enactment.

19. Section 3 of the Jammu and Kashmir Ancient Monuments Preservation Act, Svt. 1977 (1920 A.D.) empowers the Government, by notification published in the Government Gazette, to declare an ancient monument to be a protected monument for the purposes of the Act. For facility of reference, Section 3(2) of the said Act is reproduced hereunder:

“(2) Where the authority is of the opinion that it is necessary so to do, it may, from time to time, by notification in Government Gazette, and also by publication in leading newspapers, give thirty days’ notice of its intention to declare any building, artifacts, structures, streets, areas and precincts of historic or architectural or aesthetic or cultural or environmental significance and a natural feature of environmental significance and site of scenic beauty, including but not restricted to, scared groves, mountains, hills, hillocks, lakes, rivers, and other water bodies (and the areas adjoining the same) open areas, wooded areas, points, walks, rides, bridle, paths etc. as heritage or heritage site from protection under this Act, for inviting objections or suggestions in writing from any person or the public or any organization and any such notification and newspaper publication shall be affixed in a conspicuous place near the site.”

20. In terms of Section 2 of this Act of 1920 A.D. an "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 has been in existence for not less than one hundred years, or any remains thereof. The definition also encompasses the site of an ancient monument as well as such portion of the land adjoining the site as may be required for fencing, covering or otherwise preserving the monument. Section 4 of the Act contemplates that, after issuance of the requisite notification and consideration of

objections, the Director, Archaeology may purchase or take on lease any protected monument. The provision further enables the owner of a protected monument, by means of a written instrument, to constitute the Director, Archaeology as the guardian of such monument, subject to acceptance of such guardianship. In cases where the monument has no owner, the Director, Archaeology may assume its guardianship in accordance with law.

- 21.** Section 5 provides for preservation of an ancient monument by agreement with its owner. Such an agreement may, inter alia, regulate the custody and preservation of the monument, impose restrictions upon the exercise of the owner's rights, and provide for facilities of access to the monument by the public. The statutory scheme also contemplates purchase by the Government, at market value, of the land or such specified portion thereof as may be offered for sale by the owner. Section 10 further empowers the Government, where it apprehends that a protected monument is in danger of being destroyed or allowed to fall into decay, to acquire the same under the provisions of the law governing land acquisition, treating preservation of the protected monument as a "public purpose" for the purposes of such acquisition.
- 22.** A conjoint reading of the aforesaid provisions makes it manifest that the Act of 1920 A.D. is intended to secure the preservation and protection of ancient monuments and, for that purpose, provides a statutory mechanism governing their protection, guardianship, preservation by agreement, purchase and, where circumstances so warrant, acquisition in accordance with law.

23. In the present case, the record suggests that the respondents themselves were not certain as to the precise period during which the building in question had been constructed. This assumes significance because, for a structure to qualify as an "ancient monument" within the meaning of Section 2 of the Act of 1920 A.D., it must, apart from possessing the requisite historical, archaeological or artistic interest, have been in existence for a period of not less than one hundred years. No contemporaneous or other reliable documentary material has been placed on record by the respondents establishing the precise date or period of construction of Gole Mahal. The departmental record does indicate that the structure was associated with the erstwhile royal family and was stated to have been gifted to Princess Deeraj Kumari; however, such material, by itself, does not conclusively establish its date of construction for the purposes of satisfying the statutory requirement under the Act of 1920 A.D.
24. At the relevant point of time, however, the Act of 2010 was also in force. Section 3 thereof empowers the Government, on the recommendation of the competent Authority, Municipal Commissioner, Collector or Director, as the case may be, to declare, by notification in the Government Gazette, buildings and precincts possessing historic or architectural significance as heritage or heritage sites requiring protection. The statutory scheme further contemplates publication of the intention to make such a declaration, providing a period of thirty days for submission of objections, consideration thereof, and thereafter a recommendation to the Government for declaring the concerned building, artefact, structure, street or precinct as heritage or a heritage site. Once such a declaration is made, the

consequential statutory provisions, including Sections 4, 5 and 6 of the Act, become relevant and are required to be acted upon in accordance with law.

25. The record further indicates, and it is not seriously disputed by the respondents, that the structure known as Gole Mahal itself stood upon land measuring 2 kanals and 13 marlas, whereas the remaining land formed part of the surrounding precincts. The entire notified area, however, comprises land falling under Khasra Nos. 141 and 144.
26. The principal question is whether SRO 263 dated 20.05.2013 was issued in accordance with the statutory scheme and the requirements of procedural fairness. The record shows that Gole Mahal stands on land measuring 2 kanals and 13 marlas falling under Khasra No. 141. The impugned notification, however, declares the entire area measuring 5 kanals and 17 marlas falling under Khasra Nos. 141 and 144 as a heritage site. The material relied upon by the authorities primarily concerns the historical and architectural significance of Gole Mahal; it does not disclose any independent consideration of the necessity for including the entire adjoining land within the notified heritage site.
27. The record further shows that the petitioner was a known owner whose proprietary rights were directly affected by the proposed declaration. Although a general notice inviting objections within thirty days was published, the material placed before the Court does not establish that the petitioner was individually informed of the proposed action or otherwise afforded an effective opportunity to present his objections.
28. In the facts of the present case, publication of a general notice cannot be regarded as sufficient compliance with the requirements of procedural

fairness. Where the identity of the affected owner is known and the proposed action materially restricts the use and enjoyment of private property, the decision-making process must afford such owner a meaningful opportunity of representation before the competent authority. This conclusion does not detract from the power or obligation of the State to protect a structure possessing genuine historical, architectural or cultural significance. Such protection, however, must be undertaken strictly in accordance with the governing statute and through a fair decision-making process.

- 29.** It is equally a matter of concern that, despite the stated object of conservation and preservation, the structure appears to have progressively deteriorated during the pendency of the proceedings. The status report based upon the inspection conducted in the year 2021 depicts the surviving structure as being in a dilapidated condition. The very purpose of heritage protection is conservation of the property possessing historical, architectural or cultural significance; a declaration unaccompanied by effective measures for preservation cannot, by itself, achieve the statutory object.
- 30.** The allegation that the Public Interest Litigation instituted by Balbir Singh was motivated by extraneous considerations does not require adjudication for deciding the present petition. The validity of the impugned notification must be determined on the basis of the statutory provisions, the material considered by the competent authority and the legality of the procedure adopted.
- 31.** Accordingly, the impugned notification cannot be sustained in its present form. This shall not, however, preclude the competent authority from

reconsidering the matter in accordance with law, after affording the petitioner an effective opportunity of hearing and independently determining the nature and extent of the property, including any adjoining land, that is required to be protected as part of the heritage site. In that view of the matter, this writ is allowed by quashing the impugned notification.

(Sanjay Parihar)
Judge

Jammu:
11.08.2026
Pawan Angotra

