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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6456 OF 2013

Khidrapur Bachav Sangarsh Samiti

..Petitioner.

V/s.

The Union of India and Ors.

..Respondents.

Mr.Manoj Shirsat i/b. Mr.Nitin B. Patil for the petitioner.

Mr.Y.S. Bhate with Mr.Upendra Lokegaonkar and Ms.Rutuja Ambekar
i/b. Mr.Y.R. Mishra for respondent No.1.

Mrs.M.P.Thakur, AGP for respondent Nos.2 and 3.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 28TH SEPTEMBER, 2015

P.C. :-

1. Heard the learned counsel appearing for the petitioner.

The substantive prayers (1) and (2) read thus:-

'(1) *Be please to declare that sec. 20(A), to the extent of restriction on reconstruction in prohibited area, sec. 20 (C), and Sec 30(A) of the Act are unconstitutional; or read them down to say that they will not be applicable to the reconstruction of residential premises and shops / self employment establishments situated independently or with residential homes which are sole livelihood of the owner / occupant, without the prohibited area;*

- (2) *Be please to issue writ of mandamus or any writ of such nature directing respondent Nos. 2 and 3 to accept and consider the applications of petitioner's for permission for reconstruction in prohibited area.'*

2. We have carefully perused the petition. It is not even the case of the petitioner that the petitioner or any of them have made any attempt to submit any proposal for reconstruction. Paragraph 22 of the petition is very vague. It is merely stated that “the respondents refuse to entertain proposal for reconstruction by the petitioners”. It is not the case of the petitioners that on the particular date, they made an attempt to file proposal with a particular authority and that the particular authority refused to entertain the proposal.

3. Thus, even without making an attempt to file a proposal, the petitioners have invoked the provisions of Article 226 of the Constitution of India for a declaration that Sections 20(A), 20(B) and 30(A) of The Ancient Monuments Archaeological Sites and Remains Act, 1958 (for short 'the said Act') are unconstitutional.

4. Therefore, we decline to entertain this petition under Article 226 of the Constitution of India. However, it will be open for the petitioners to submit a proposal to the concerned authority

under the said Act. It is obvious that if the proposals / applications are submitted by the petitioners, the concerned competent authority shall accept the same and deal with it in accordance with law, as expeditiously as possible.

5. Subject to what is observed above, the petition is disposed of. All contentions including the contentions on the constitutional validity of the relevant provisions of the said Act are kept open.

6. If the petitioners are aggrieved by the decision taken by the competent authority, they can always raise the issues which are raised in the petition while filing appropriate proceedings.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)

C E R T I F I C A T E

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