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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5240/2016 & CM No.21818/2016 (*stay*)

RAJEEV KUMAR YADAV

..... Petitioner

Through: Mr. Rajeev Kumar Yadav, petitioner-
in-person.

Versus

ARCHAEOLOGICAL SURVEY OF INDIA & ORS

..... Respondents

Through: Mr. Jayant Tripathi with Mr. Dinesh
Dahiya, Advs. for R-1/ASI.

Mr. Siddhartha Shankar Roy, Adv. for R-3 & 4
with Bharat Meena, SI Delhi Police.

Mr. Trinayan Sonowal for Mr. Sanjeev Ralli, Adv.
for DPCC.

Mr. Jayant K. Mehta, Mr. Shaurya Kuthiala &
Ms. Suveni Bhagat, Advs. for applicant.

+ CONT.CAS(C) 842/2016

RAJEEV KUMAR YADAV

..... Petitioner

Through: Mr. Rajeev Kumar Yadav, petitioner-
in-person.

Versus

DR RAKESH TIWARI & ORS

..... Respondents

Through: Mr. Santosh Kumar Tripathi, ASC,
GNCTD for R-3 to 5.

Mr. Trinayan Sonowal for Mr. Sanjeev Ralli, Adv.
for DPCC.

Mr. Nikhil Goel with Mr. Ashutosh Ghade, Advs.
for SDMC.

Mr. Jayant K. Mehta, Mr. Shaurya Kuthiala &
Ms. Suveni Bhagat, Advs. for applicant.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
% **05.09.2016**

CM No.24347/2016 (for Impleadment) in W.P.(C) 5240/2016

Allowed as prayed for and the applicant has been impleaded as respondent No.7 to the writ petition.

W.P.(C) No.5240/2016

1. This petition has been filed by way of Public Interest Litigation with a prayer to direct the respondent Nos.1 to 5 to take appropriate action for removal of the alleged illegal and unauthorized construction on the property No.BP-12, Nizamuddin East, New Delhi claiming that the same is within 100 mts. from Abdul Rahim Khan-i-Khanan's Tomb which is a centrally protected monument under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short 'the Act'). By order dated 31.05.2016, this Court directed that the respondent Nos.1 to 4 shall ensure that no construction is carried on at the site in question contrary to the permission granted by the competent authority under the provisions of the Act vide proceedings dated 09.05.2015.

2. Thereafter, the respondent No.7 herein filed application seeking his impleadment as a party respondent to the writ petition stating that he is the

owner of the property No.BP-12, Nizamuddin East and that the writ petition has been filed with a false allegation of unauthorized construction. It is pleaded by him that though he was only carrying on renovation work in terms of the permission granted by the competent authority under Section 20-C and Section 20-D of the Act, under the guise of the interim order dated 31.05.2016 passed by this Court the permission for renovation was cancelled by the competent authority by order dated 13.06.2016 without following due process of law.

3. By order dated 01.08.2016, we directed that no coercive steps shall be taken against the respondent No.7 and adjourned the matter to enable the counsel for all the parties to get ready for hearing.

4. We have heard the learned counsel for both the parties. A perusal of the order dated 13.06.2016 passed by the competent authority under the Act shows that permission was issued to the respondent No.7 herein for repair/renovation in respect of the property in question vide letter dated 09.05.2015. However, the said permission was revoked and cancelled by proceedings dated 13.06.2016 on the ground of alleged violation of the terms and conditions of permission issued for repair/renovation.

5. We found that though Section 20-D of the Act empowers the competent authority to withdraw the permission granted for repair/renovation in prohibited area, in the light of sub-Section (7) of Section 20-D read with Rule 18 of the Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and other functions of the Competent Authority) Rules, 2011 (for short 'the Rules'), it appears to us that wherever the competent authority is of the opinion that

permission granted by it has been violated by the applicant, the matter has to be referred to the National Monuments Authority constituted under Section 20-F for its recommendations and if so recommended the permission may be withdrawn.

6. It is not disputed before us that before passing the order dated 13.06.2016 the competent authority has not followed the procedure contemplated under Section 20-D(7) of the Act and Rule 18 of the Rules. Therefore, we consider it appropriate to set aside the order passed by the competent authority dated 13.06.2016 and direct to take a fresh decision following due process of law.

7. We accordingly dispose of the writ petition with the following directions:

(i) The order of the competent authority dated 13.06.2016 revoking the permission granted to the respondent No.7 shall stand set aside.

(ii) The competent authority shall pass an appropriate order afresh after giving an opportunity of being heard to the respondent No.7.

(iii) The writ petitioner is at liberty to raise objections, if any, in which event, the competent authority shall also take the same into consideration.

(iv) The above-said exercise be completed by the competent authority within eight weeks from today.

(v) Till such time, the respondent No.7 shall not proceed with any renovation work/construction over the property in question and the respondent Nos.1 to 6 shall not take any coercive steps for removal of the existing structures.

CONT.CAS(C) No.842/2016

In the light of the disposal of the writ petition, the Contempt Case needs no consideration and the same is accordingly dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 05, 2016
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