

\$~41

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

+ W.P.(C) 594/2017

ROSELINE WILSON AND ORS

..... Petitioners

Through: Mr Virag Kumar Agarwal and Ms
Sneh Lata, Advocates.

versus

ARCHAEOLOGICAL SURVEY OF INDIA
AND ORS

..... Respondents

Through: Mr Manish Mohan, CGSC with Ms
Manisha Saroha, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

20.11.2017

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 10.01.2017 (hereafter 'the impugned order') passed by the Director General, Archaeological Survey of India (ASI). The said order was passed in compliance of the order dated 16.10.2008 passed by the Division Bench of this Court in ***Roseline Wilson & Ors. v. Union of India and Ors: LPA No. 123 of 2007***

2. The principal grievance of the petitioner is that the petitioners were heard by the Deputy Superintendent, Archaeologist of ASI but the order has been passed by Director General, ASI who had never heard the petitioners.

3. The learned counsel appearing for respondents submits that the Deputy Superintendent of ASI had heard the petitioners at length and he had

thereafter drafted the order. However, the same was forwarded to the Director General of ASI to issue the same. He further submits that this was done to obviate any challenge that the impugned order was not passed by the concerned officer.

4. Section 19 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereafter ‘the Act’), which sets out the provision for removal of buildings from protected area *inter alia* reads as under:-

“19. Restrictions on enjoyment of property rights in protected areas.—

(1) No person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining, quarrying, excavating, blasting or any operation of a like nature in such area, or utilise such area or any part thereof in any other manner without the permission of the Central Government: Provided that nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for purposes of cultivation if such cultivation does not involve the digging of not more than one foot of soil from the surface.

(2) The Central Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal.”

5. A plain reading of Section 19(2) of the Act indicates that the Central Government is empowered to direct removal of any building which is constructed by a person within a protected area in contravention of the provisions of Section 19(1) of the Act.

6. In view of the above, the concerned officer who exercises the delegated power of the Central Government was required to hear the petitioners and pass the necessary orders.

7. In ***Gullapalli Nageshwar Rao and Others v. Andhra Pradesh State Road Transport Corporation and Anr.***: AIR 1959 SC 308, K Subba Rao, J. had observed that “*If one person hears and another decides, then personal hearing becomes an empty formality*”. In ***Rasid Javed v. State of U.P.***: (2010) 7 SCC 781, the Supreme Court relied upon its earlier decision in ***Gullapalli Nageswara Rao*** (*supra*) and observed that “*a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted*”.

8. The above principle may not be applicable in all administrative matters, however as observed by the Supreme Court in ***A.K. Kraipak v. Union of India***: 1969 (2) SCC 262 that “*the dividing line between an administrative power and quasi-judicial power is quite thin and is being gradually obliterated*”. Undisputedly, whether the function is purely administrative or quasi-judicial, the object is to arrive at a just decision.

9. In the present case, the decision of the Central Government under section 19(2) of the Act has serious consequences on the persons being removed from the protected area and therefore, the petitioners were also afforded a hearing. However, it is not disputed that the Director General of ASI - the authority who has passed the impugned order - had not heard the petitioners.

10. Thus, without going into the merits of the disputes or whether the

property in question belongs to ASI or not, the impugned order is set aside and the matter is remanded for re-consideration in accordance with law.

11. The concerned officer – the officer who exercises the delegated power of the Central Government under Section 19(2) of the said Act – shall issue a notice, providing the petitioners an opportunity to be heard and pass an order after hearing the petitioners. It is clarified that no adjournments would be granted to the petitioners for the aforesaid purpose, and in the event the petitioners are not represented on the date fixed, their right to be heard would stand closed and the concerned officer shall proceed to pass an order as he deems fit.

12. It is further directed that the concerned officer shall fix a hearing within a period of six weeks from today and the concerned officer shall pass the final order within a period of eight weeks thereafter.

13. The petition stands disposed of with the aforesaid observations.

14. It is clarified that in the meanwhile *status quo* to the property in question shall be maintained.

15. Order *dasti*.

NOVEMBER 20, 2017
RK

VIBHU BAKHRU, J