

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17068 of 2018

Based on The News Dated 18.08.2018 in the English Daily 'The Times of India'.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Sasaram.
3. The Superintendent of Police, Sasaram.
4. The Executive Officer, Sasaram.
5. The Secretary, The Archaeological Survey of India, Patna.

... .. Respondent/s

with
Miscellaneous Jurisdiction Case No. 2125 of 2015
In
Civil Writ Jurisdiction Case No.11271 of 2006

Alok Chamaria, son of Late Ram Gopal Chamaria, resident of Mohalla Company Sarai, Ward No,2, Sasaram, PO & PS Sasaram, District Rohtas.

... .. Petitioner/s

Versus

1. The Union of India through Sri Lalit K Panawar, S/o name not known to the Petitioner, Secretary, Archaeological Department, Government of India, New Delhi.
2. Dr. Rakesh Tewri, S/o name not known to the Petitioner, Director of Archaeology, Archaeological Survey of India, Government of India, New Delhi.
3. Sri Hem Sagar A Naik, S/o name not known to the Petitioner, Superintendent of Archaeology, Archaeological Survey of India, Patna Circle, Patna.
4. The State of Bihar through Sri Sandeep Kumar, S/o name not known to the Petitioner, Collector Rohtas at Sasaram, PO & PS Sasaram, District Rohtas.
5. Sri Niraj Kumar, S/o Sri Nand Kumar Singh, Conservation Assistant, Sasaram Circle, PO & PS Sasaram, District Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. A.K. Srivastava, Advocate
For the UOI	:	Mr. S.D. Sanjay, Addl. S.G.
		Mr. R.K. Sharma, C.G.C.
For the State	:	Mr. Harish Kumar, G.P. 8
For Nagar Parishad, Sasaram:		Mr. Vijay Sankar Upadhaya, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-09-2018

1. As the dispute in the C.W.J.C. and M.J.C. is with respect to the same pond, both are heard, decided and disposed of together by this common order.

1.1 C.W.J.C. No. 17068 of 2018 was instituted by a *suo motu* exercise of powers on the basis of the news report published in The Times of India, Patna Edition dated 18.08.2018 with respect to poor condition and not taking proper care of the artificial lake or pond surrounding Sher Shah's Mausoleum. It was reported that despite the High Court's directive to the Archaeological Survey of India in November, 2008 to preserve the monument and to sanitise the pond on a regular basis, the same has not been complied with.

1.2. So far as M.J.C. No. 2125 of 2015 is concerned, the same has been preferred by the original writ-petitioner alleging non-compliance of the directions issued by the Division Bench of this Court in its order dated 17th November, 2008 in C.W.J.C. No. 11271 of 2006. It is the case on behalf of the original writ-petitioner and the applicant of M.J.C. No. 2125 of 2015 that while disposing of the aforesaid



Writ Petition No. 11271 of 2006, the Division Bench issued various directions, however, the same have not been complied with in its true spirit. It is the case on behalf of the petitioner that the Division Bench issued following eight directions while disposing of C.W.J.C. No. 11271 of 2006, which have not been complied with in its true spirit. The directions which were issued are as under:-

“(i). The Director of Archaeology, Archaeological Survey of India, Government of India (Respondent no. 2) and the Superintendent, Archaeology, Patna Centre, Patna (Respondent no. 3) shall take steps under the Ancient Monuments Preservation Act, 1904; Ancient Monuments and Archaeological Sites and Remains Act, 1958; the notifications issued from time to time thereunder and all other relevant provisions of law for delineating ‘prohibited area’ and ‘regulated area’.

(ii). The respondent nos. 2 and 3, namely, Director of Archaeology, Government of India and the Superintendent of Archaeology, Patna shall get a restoration plan prepared, and, if necessary, by seeking advice from experts, for restoration of the subject monument and ensure that the monument is restored as per said plan.



(iii) The District Magistrate, Rohtas and the other functionaries of the State Government shall provide all necessary help to the Archaeological Survey of India in stopping use of the tank for bathing and washing clothes and from immersion of idols in the said tank in any manner whatsoever.

(iv) The respondent Nos. 4 and 5 shall help the respondent nos. 2 and 3 in cleaning the pond/tank and for removal of all accumulated mud, garbage, sinking filth and other objects causing damage out of the pond/tank. Once the pond/tank is cleaned, the respondent nos. 2 and 3 shall ensure that it is maintained regularly.

(v) The respondent Nos. 2 and 3 shall take steps with the help of local administration to ensure that the sewerage of the locality does not enter the pond/tank.

(vi) The respondent nos. 4 and 5 shall ensure desilting of the inlet and outlet canal and further ensure their proper maintenance and that inlet and outlet canals do not get choked.

(vii) The respondent nos. 2 and 3, while granting fishing contract shall ensure that the cleanliness of the pond/tank is not affected by such activities.



(viii) The respondent nos. 2 and 3, in addition to the specific directions as above, shall take all other steps generally for protection and preservation of the subject monument.”

2. Shri A.K. Srivastava, learned counsel appearing on behalf of the applicant has vehemently submitted that the Archaeological Survey of India has not got restoration plan prepared, for restoration of the subject monument and to ensure that the monument is restored as per the said plan. It is further submitted that even the direction contained in Paragraph (i) has not been complied with and it is not known which area is declared as ‘prohibited area’ and a ‘regulated area’ and, therefore, no further steps are taken to remove the encroachment from the surrounding area which may be either ‘prohibited area’ or ‘regulated area’. It is further submitted by Shri A.K. Srivastava, learned counsel appearing on behalf of the original writ-petitioner that even other directions with respect to cleaning of the pond/tank have not been complied with.

3. A show-cause is filed in the M.J.C. on behalf of the respondents affirmed by the Additional Collector, Rohtas pointing out the steps taken to comply with the directions issued by this Court in C.W.J.C. No. 11271 of 2006. A show-cause is



also filed on behalf of the Archaeological Survey of India in which it is stated that the directions issued by this Court has been complied with, more particularly with respect to the 'prohibited area' and 'regulated area'. It has also been stated that the conservation plan is also prepared by the Archaeological Survey of India.

4. In the counter to the C.W.J.C. No. 17068 of 2018 the Archaeological Survey of India has stated/submitted the steps taken to maintain the good condition of the pond/tank, more particularly with respect to the cleanliness of the pond/tank as well as the monument. It is stated as under:-

“I) Earlier, the Idol immersion in the pond/tank used to take place at large scale on public religious festivals like Durga puja, Saraswati puja, Chhath puja etc. by which the Tank used to filled with muds and other materials but the same has been effectively stopped since 2009. Thus an important factor of polluting the pond has been checked.

II). Large number of people used to take bath and also used to wash their clothes in the tank by which also the pond was being polluted, however, the same has also been completely prohibited which has also largely helped in



reducing the pollution level in the tank.

- III) Further, the work of repair of parts of outlet water circulation network around the tank falling within the centrally protected areas was going on which has now been completed and all the dirt and filth which has got collected in the bed of the water circulation outlets have been removed and now it has become functional and beautified which is evident from the photographs.
- IV) The work of de-silting and repair of outlet channel up to 120 meters from the tank, which is the limit of territorial jurisdiction of ASI, has already been completed, as a result of which the outlet flow of water has now become normal and active to that extent which is also evident from the photographs.
- V) The work of Manual cleaning of the pond/tank is periodically conducted by ASI. But admittedly this is only a temporary solution with limited results. Due to stagnation of water in the tank, the growth of scum and aquatic plants and weeds become frequent and wide spread as the mud or filth falling in the tank is not able to move out. The problem is compounded by the inflow of sewer into the tank from the adjoining residential localities.



Resultantly the tank sometimes emits bad odour. However, periodical manual cleaning by ASI makes the tank free from dirt and scum in that part of the tank which is evident from the photographs. ”

4.1. In the counter filed on behalf of the Archaeological Survey of India the further long term measure or permanent solution for the proper maintenance of the tank are suggested which are as under:-

- “i) Reactivation of the original inlet and outlet channels in order to ensure continuous water circulation in the tank which will prevent stagnation of water causing problems in desired level of maintenance. Since majority of these channels extending about 4 Kms. lies beyond the centrally protected area, there is need of constant monitoring and support and also work by the District Administration. Thus, the District Administration has also to continuously work in coordination with the Answering Respondent otherwise permanent solution cannot be achieved. Recently, the State Government has taken initiative in this regard and the constructions of the two channels are going on.
- ii) Another important step is to check the entry



of sewer into the tank from the adjoining residential areas especially on the eastern and southern sides. Reportedly Nagar Parishad, Sasaram has taken initiative in this direction and the work of constructing sewer system has commenced. It is expected that they will complete it soon so that the sewer water from the residential area are diverted and it does not reach near the tank.”

Thereafter in Paragraph 6 it is stated as under:-

“6. That the Answering Respondent states that it assures this Hon’ble Court to make all efforts to see that this famous Monument and its surroundings including the Tank/Pond which is also within the protected area are maintained and its repair and upkeep is always done timely and efforts are also made for its beautification.”

5. Learned counsel appearing on behalf of the Archaeological Survey of India has also taken us to the latest photographs as well as the C.D. showing the present status of the pond/tank as well as the monument and we are satisfied that sufficient care has been taken to maintain the pond/lake as well as the monument, more particularly with respect to the cleanliness of the pond/tank and all necessary steps are taken in furtherance of the directions issued by this Court while



disposing of C.W.J.C. No. 11271 of 2006.

5.1. In the counter filed by the District Magistrate it is stated that on inspection it has been found that the waste water is not entering into the tank. It is further stated and submitted that the drainage system in Sasaram town is being executed by BUIDCO since February, 2018. It is submitted that to see that the waste water does not enter the pond/tank, a permanent drainage system is being constructed so that there is no possibility at all to enter the sewer into the tank.

6. Having heard learned counsel appearing on behalf of the respective parties, more particularly considering the photographs and the C.D. showing the latest position and the counters filed on behalf of the Archaeological Survey of India as well as the District Magistrate and the show-cause in M.J.C. No. 2125 of 2015 filed on behalf of the Archaeological Survey of India and the District Administration, we are of the opinion that the necessary required steps are taken in compliance of the directions issued by this Court in its order passed in C.W.J.C. No. 11271 of 2006, more particularly with respect to the map as well as declaring the 'prohibited area' and 'regulated area'. Even all steps are being taken by the Archaeological Survey of



India to maintain properly the monument. Therefore, we dispose of the present petition as well as the M.J.C. No.2125 of 2015. However, it is observed that the monument and the pond/tank is ancient and the same seems to have been constructed in the 16th Century by the emperor Sher Shah Suri and the same is in the control of the Archaeological Survey of India and the same is required to be maintained properly by the Archaeological Survey of India and the District Administration and the Nagar Parishad, all efforts shall be made to maintain the tomb/ancient monument as well as the pond and tank and the Archaeological Survey of India, District Administration and the Nagar Parishad are hereby directed to maintain the cleanliness of the pond/tank and all are directed to see that the sewer and/or the waste water do not enter the tank/pond. All efforts shall be made to maintain the tomb/ancient monument by the Archaeological Survey of India. The District Administration as well as the Nagar Parishad also to take further steps by a long term measure/permanent solution as suggested by the Archaeological Survey of India reproduced hereinabove. The District Magistrate, officials of the Archaeological Survey of India as well as the Nagar Parishad are directed to see that there is no encroachment on the surrounding area more particularly in 'prohibited area' and the



‘regulated area’.

6.1. With the above, the present writ petition as well as the M.J.C. No. 2125 of 2015 stand disposed of.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	28.09.2018
Transmission Date	

