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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1269/2018**

SURESH CHAND GUPTA AND ANR. Petitioners
Through: Mr Rohit Gandhi, Advocate.

versus

**ARCHAEOLOGICAL SURVEY OF
INDIA AND ORS.** Respondents

Through: Mr Ashim Sood, CGSC with Ms
Payal Chandra, Advocate for R-1, 2, 3
& 4.
Mr Rakesh Mittal, Standing Counsel
with Ms Kamlesh Anand and Ms
Yamini Mittal, Advocates for
SDMC/R-5.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
ORDER
% **12.02.2018**

VIBHU BAKHRU, J

CM No. 5325/2018

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioners are essentially aggrieved by non-grant of permission to construct on their land. The petitioners own a piece of land admeasuring 12 biswas in Khasra No. 541/519/170/2 of Vilage Kharera, now known as 'Green Park Extension, New Delhi' (hereafter 'the said land'). The said land is in the immediate vicinity of a centrally protected monument known as

‘Sakri Gumti’ (hereafter ‘the Monument’). The said land falls within the prohibited zone of 100 meters of the Monument.

4. The petitioners state that other persons who own land in the vicinity of the Monument had constructed buildings prior to the amendment in the Ancient Monument and Archaeological Site and Remains Act, 1958 (hereafter ‘the Act’), by virtue of which any further construction in the prohibited zone, is prohibited . However, the petitioners were unable to do, so since the said land had been illegally occupied by respondent no.1 (hereafter ‘the ASI’). The petitioners claim that the ASI was evicted from the said land on 13.02.2017; however, by that time, the Act had been amended to prohibit any construction within the prohibited zone.

5. In the aforesaid context, the petitioners pray that the petitioners be granted permission as an exceptional case to construct a residential building on the said land. In the alternative, it is prayed that the respondents be directed to acquire the said land by the way of private purchase at fair market value, or provide compensation in terms of Section 27 of the Act.

6. Insofar as the petitioners’ prayer for granting permission for construction of a residential building is concerned, it would be necessary to refer to Sub-section (3) and (4) of Section 20A of the Act. The same are set out below:-

“20A. Declaration of prohibited area and carrying out public work or other works in prohibited area.—Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument:

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“(3) In a case where the Central Government or the Director-General, as the case may be, is satisfied that—

(a) it is necessary or expedient for carrying out such public work or any project essential to the public; or

(b) such other work or project, in its opinion, shall not have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding, it or he may, notwithstanding anything contained in sub-section (2), in exceptional cases and having regard to the public interest, by order and for reasons to be recorded in writing, permit, such public work or project essential to the public or other constructions, to be carried out in a prohibited area:

Provided that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a prohibited area in respect of such protected monument, shall be deemed to be the prohibited area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted by the Central Government or the Director-General, as the case may be, for the construction within the prohibited area on the basis of the recommendation of the Expert Advisory Committee, shall be deemed to have been validly granted in accordance with the provisions of this Act, as if this section had been in force at all material times:

Provided further that nothing contained in the first proviso shall apply to any permission granted, subsequent to the completion of construction or re-construction of any building or structure in any prohibited area in pursuance of

the notification of the Government of India in the Department of Culture (Archaeological Survey of India) number S.O. 1764, dated the 16th June, 1992 issued under rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, or, without having obtained the recommendations of the Committee constituted in pursuance of the order of the Government of India number 24/22/2006-M, dated the 20th July, 2006 (subsequently referred to as the Expert Advisory Committee in orders dated the 27th August, 2008 and the 5th May, 2009).

(4) No permission, referred to in sub-section (3), including carrying out any public work or project essential to the public or other constructions, shall be granted in any prohibited area on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the assent of the President.”

7. A plain reading of Section 20A(3) of the Act indicates that in certain exceptional cases, permission could be granted for carrying out any work or project. However, such permission is only permissible where the Central Government is satisfied that the permission is for carrying out any public work or any project essential to the public or any other works, which are in public interest. Clearly, the petitioners’ request does not fall under any of those categories and, therefore, the question of granting permission to the petitioners to carry out any construction within the prohibited zone does not arise.

8. The provisions of Section 20A(4) of the Act also make abundantly clear that no permission will be granted under Section 20A(3) of the Act in the prohibited area after the date on which the of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill,

2010 receives the assent of the President. The said Bill received the assent of the President on 29.03.2010. Thus, thereafter, the ASI /Central Government do not have any power to grant any permission for construction under the prohibited area.

9. The contention that the petitioners are entitled to any compensation for loss or damage in terms of Section 27 of the Act is also unpersuasive.

10. Section 27 of the Act reads as under:-

“27. Compensation for loss or damage.—Any owner or occupier of land who has sustained any loss or damage or any diminution of profits from the land by reason of any entry on, or excavations in, such land or the exercise of any other power conferred by this Act shall be paid compensation by the Central Government for such loss, damage or diminution of profits.”

11. It is apparent from the above that compensation is only contemplated in cases of any entry or excavation or where a loss is caused by exercise of any power under the Act. In this case, admittedly, no excavation has been done on the said land. Further, as noticed above, the ASI has not exercised any power, which has resulted in loss to the petitioners.

12. Mr Gandhi, the learned counsel appearing for the petitioner contended that failure to exercise power to grant permission to construct on the said land should also be construed as resulting in loss, which is to be compensated under Section 27 of the Act. This contention is also flawed as the ASI has no power to grant any permission to construct and thus the question of any damage/loss resulting from non exercise of such power is plainly illusory.

13. Mr Gandhi relied upon the decision of the Karnataka High Court in *State of Karnataka, rep., by its Chief Secretary and Ors. v. Smt. T. Jayamma and Anr.: ILR 2014 KAR 5749* and drew the attention of this Court to Paragraph 14 and 15 of the said Judgment, which read as under:-

“14. In view of the aforesaid scheme of the Act and Rules and decisions of the Apex Court, we are unable to endorse the view taken by the Division Bench of this Court in *State of Karnataka v. Srikanthadatta Narasimha Raja Wodeyar* (supra). However, the issues arising herein may be addressed in view of the fair concession made by Learned Advocate General that the provisions of Section 24 of the Act already provide for compensation by the Government for loss, damage or diminution of profits being sustained by any owner or occupier of land on account of exercise of any power conferred by the Act. Therefore, it is admittedly open to respondent No.1 to claim compensation in terms of the provisions of Section 24, if she is so advised. Learned Advocate General also fairly stated that if and when such application for compensation is made, it would be considered in accordance with law and decided as expeditiously as practicable.

15. The parties having arrived at the aforesaid understanding, the appeal is allowed by consent and the impugned order is set-aside with the direction that if and when respondent No.1 makes an appropriate application under Section 24 of the Act or a fresh application for a license under Rule 14 of the Rules, it may be considered by the State Government in accordance with law and as expeditiously as practicable and preferably within a period of three months of receipt of such application. There is no order as to cost.”

14. This Court has certain reservations as to the said judgment. Notwithstanding the same, it is also clear that the directions issued in Paragraph 15 of the aforesaid order are pursuant to the concession made by

the learned Advocate General appearing in that case. It is also material to note that the Court had not directed grant for any compensation, but only directed that the representation of the respondent therein be considered in accordance with law. Thus, if compensation was not payable in law, no such compensation would be paid.

15. This Court is of the view that there is no ambiguity in the provisions of the Act and as noted above, the petitioners are not entitled to compensation under Section 27 of the Act.

16. Mr Gandhi also pled that the Central Government may be directed to acquire the said land under Section 20 of the Act.

17. Section 20 of the Act reads as under:-

“20. Power to acquire a protected area.—If the Central Government is of opinion that any protected area contains an ancient monument or antiquities of national interest and value, it may acquire such area under the provisions of the Land Acquisition Act, 1894 (1 of 1894), as if the acquisition were for a public purpose within the meaning of that Act.”

18. It is at once clear that the provisions of Section 20 are of little assistance to the petitioner. The question of acquiring any land would arise only when the Central Government is of the opinion that the land in question is in “*protected area*” and “*contains an ancient monument or antiquities*”. The said land does not contain any antiquity and does not have any monument. It is pointed out by the learned counsel for respondent no.1 that the said land is not in a protected area. Therefore, no direction can be issued to the Central Government to acquire the said land.

19. In view of the above, no relief can be granted to the petitioner in this

case.

20. The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 12, 2018
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