

% *Date of decision: 10th December, 2018*

SURESH CHAND GUPTA & ANR Appellants
Through: Mr. Rohit Gandhi, Adv.

ARCHAEOLOGICAL SURVEY OF INDIA
& ORS

Through: Mr. Ashim Sood, CGSC with
Ms. Payal Chandra, Adv. for R-1 to 3
Mr. Dhanesh Relan, SC for SDMC
with Ms. Gauri Chaturvedi & Mr.
Rajeev Jha, Adv. for SDMC

V. KAMESWAR RAO, J. (ORAL)

CM. No. 51702/2018(for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM. No. 51703/2018 (application for condonation of 257 days delay in re-filing the appeal)

For the reasons stated in the application, the delay of 257 days in re-filing the appeal is condoned. Application stands disposed of.

LPA 692/2018

1. This appeal has been filed by the appellants challenging the order of the learned Single Judge dated February 19, 2018 whereby the learned Single Judge has dismissed the writ petition.

2. The grievance of the appellants before the learned Single Judge was the non-grant of permission to construct on their land. The appellants own a piece of land admeasuring 12 biswas in Khasra No. 541/519/170/2 of Village Kharera, now known as Green Park Extension, New Delhi. The said land is in the immediate vicinity of a centrally protected monument known as Sakri Gumti. The said land falls within the prohibited zone of 100 meters of the Monument. It was the case of the appellants that the other persons who owned 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, by virtue of which any further construction in the prohibited zone, is prohibited . It was their case that they were unable to construct the land, as the land was being illegally occupied by respondent no.1 ASI. The ASI was evicted from the said land on February 13, 2017. By that time, the Act was amended to prohibit any construction within the prohibited zone. It was in this background, the appellants had filed the petition before the learned Single Judge.

3. Two submissions were made on behalf of the appellants, (i) for granting permission to construct a residential building on the

said land, and (ii) in the alternative, 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.

4. Insofar as the plea No.1 above is concerned, the learned Single Judge has rejected the same by relying upon Section 20A of the aforesaid Act whereby sub Section 3 and 4 of the said Section indicates that in certain exceptional cases, permission could be granted for carrying out any work or project, 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. The case of the appellants does not fall in any of those categories. Therefore, the learned Single Judge has rejected the plea of granting permission. He also referred to Section 20A(4) of the Act to hold that the said Section make it 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 March 29, 2010. The learned Single Judge held that after that date,

the ASI /Central Government do not have any power to grant any permission for construction under the prohibited area.

5. Insofar as plea No.2 above is concerned, in support of their submission, appellants had placed reliance on Section 27 of the Act. The appellants had also relied upon the judgment of the Karnataka High Court in the case of *State of Karnataka, rep., by its Chief Secretary and Ors. v. Smt. T. Jayamma and Anr. ILR 2014 KAR 5749* wherein a direction was given if and when respondent No.1 makes an application under Section 24 of the Act or a fresh application for license under Rule 14 of the Rules, it shall be considered by the State Government, in accordance with law. The learned Single Judge rejected the said plea on the ground that the said order was passed by the Karnataka High Court on a concession given by the learned Advocate General. We also note that the learned Single Judge has expressed certain reservations on the said judgment. Be that as it may, we concur with the view of the learned Single Judge that the said order was passed on a concession made by the learned Advocate General and such order cannot enure to the benefit of the appellants herein.

6. During the course of his submissions, Mr. Gandhi had also pleaded that the direction be given to the respondents to acquire the land. Such a direction cannot be issued by the Court. It is not the case of the appellants that their fundamental rights have been violated, for this Court to issue a writ of mandamus to the Government. In so far as plea related to Section 27 for award of compensation is concerned, we agree with the conclusion of the learned Single Judge 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 exaction 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. We are of the view that the learned Single Judge was justified in rejecting the writ petition. We do not see any merit in the appeal. The same is dismissed. No costs.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 10, 2018/ak