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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7954/2016**
D B SANYAL

..... Petitioner

Through: Mr. Alakh Alok Srivastava, Adv. with
Mr. Chandan Kr. Singh, Adv.

versus

ARCHAEOLOGICAL SURVEY OF INDIA & ORS.

..... Respondent

Through: Mr. Gigi C. Goerge, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **28.08.2018**

1. Petitioner has filed the writ petition challenging the constitutional validity of Section 20-A of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and feels aggrieved by the stipulation contained therein that no construction shall be permitted within a radius of 100 mtrs from the protected monument.
2. It is the case of the petitioner that the said criteria of preventing construction within 100 mtrs has been incorporated without any rational basis, and that it is an unreasonable and a arbitrary decision. Accordingly seeking quashing of the same, the writ petition has been filed by bringing on

record various factual aspects of the matter.

3. However, learned counsel appearing for the respondent invites our attention to a judgment of the Supreme Court in the case of *Archaeological Survey of India v. Narender Anand and Ors.*, decision rendered on 16th January, 2012 and reported in *(2012) 2 SCC 562*. On going through the aforesaid judgment, we find that in the said case, the provision of Section 20-A was considered and a detail discussion, in that regard is made in Para 29 of the aforesaid judgment.

4. The following observations in para 29 would be sufficient enough to conclude the matter.

“29. XXXXXX XXXXXX XXXXXX

Not only this, by virtue of proviso to Section 20A(1) the Central Government has been clothed with the power to extend the prohibition beyond 100 meters by issuing a notification in the Official Gazette keeping in view the classification of any protected monument or protected area, as the case may be, under Section 4A.

XXXXXX XXXXXX XXXXXX

5. Considering the fact that the issue now canvassed by the petitioner already stands decided by the Supreme Court, we see no reason to grant any indulgence in the matter. However, during the course of hearing, learned counsel had brought on record certain publications made in the newspaper

indicating that the Central Government is going to classify protected monuments into three categories namely A, B and C and thereafter reduce the distance from the protected monuments where constructions can be made. It is indicated that the proposals are pending with the Union of India and the Union of India may be directed to finalize all those proposals. It is for the Union of India to take into consideration all these factors and proceed to amend the provision, if advised, after taking a policy decision into the matter. At this stage, it is not appropriate for this Court to issue any mandamus as Union of India is already seized of the matter. The petition is dismissed. No costs.

CHIEF JUSTICE

V. KAMESWAR RAO, J

AUGUST 28, 2018/ak