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

+ **W.P.(C) 4890/2018**

SHRI KIRAN K. KAPILA AND ANR.

..... Petitioners

Through: Dr Arun Mohan, Sr. Advocate with
Mr Arvind Bhatt, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Sanjeev Sabharwal, Supreme
Court. Govt. Counsel for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **15.05.2019**

1. The petitioners are senior citizens and are owners of the property bearing No. J-13, Green Park, New Delhi (hereafter referred to as 'the Property'). The petitioners have filed the present petition, *inter alia*, impugning a communication dated 22.01.2016, directing the petitioners to stop any construction related activities on the Property till further instructions from respondent no. 3 (National Monument Authority). The petitioners further pray that in the alternative, the petitioners may be permitted to complete the finishing work at the Property and occupy the same.
2. The Property is located within 100 meters of a centrally protected monument known as 'Dadi-Poti Ka Gumbad'. It is stated that the Property was built up to the first floor in the year 1950 and was subsequently constructed up to the second floor.

3. Respondent No.3 filed a counter affidavit stating that the petitioners had applied for permission for addition and alteration of the existing building on 11.01.2000 and the said permission was granted by respondent No.2 (ASI) by a letter dated 16.09.2002 and the petitioners were permitted to carry out additions, alteration, construction up to the '*height of 26 ft. 10 inches plus 10 ft. mumty and roof top construction*'. It is stated by respondent No.2 that in this context, a letter dated 12.03.2004 was received informing the DG, ASI that the existing building was already constructed up to a level of 11.63 meters (38.33 ft) from the ground floor.

4. On 26.05.2004, petitioner no. 1 sent a letter to respondent no. 2 requesting permission for construction of the second floor without increasing the existing height. This was followed by another letter dated 24.12.2007, requesting for relaxation of the height for construction of the second floor upto a level of 12.35 meters (40 ft 6 inches) from the road level.

5. Admittedly, a request made by petitioner No.1 was acceded to by the Expert Advisory Committee constituted under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 at a meeting held on 11.02.2008. The said approval was conveyed to the petitioners by a letter dated 21.02.2008. In terms of the said letter, the petitioners were permitted to construct a second floor over the existing building, however, "*reconstruction / construction/addition/alteration*" was permitted upto the maximum height of 12.35 meters from the ground level upto top level. The said plan was subject to certain conditions, as stated in the said letter.

6. The permission granted under the letter dated 21.02.2008 was valid only for a period of one year from the date of issuance of license.

Admittedly, the said license was extended by ASI on 25.01.2011 for a further period of two years from 20.02.2009 to 19.02.2011. This was further extended by ASI on 07.07.2011 for a further period of one year from 19.02.2011 to 18.02.2012.

7. The said permission was thereafter extended by respondent No.3 (National Monument Authority) for a further period upto 17.03.2015. This was communicated to the petitioners vide a letter dated 20.03.2013.

8. The respondents subsequently noticed certain anomalies and by a letter dated 14.01.2016, decided to place the license issued to the petitioners under suspension. It is relevant to state that the petitioners had already carried out certain construction by the said date. The petitioners claim that the last slab of the second floor was cast on 15.01.2015 and the top slab of the mummy was cast on 15.02.2015. According to the petitioners, construction was raised prior to the suspension of the licence and within the terms of the license granted to them as extended from time to time.

9. Subsequently, on 06.06.2016, respondent No.3 sent a letter stating that revalidation of the license on 09.10.2013 was in violation of Rule 14 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, as the same stipulated that the license could not be extended / revalidated for a cumulative period of more than 5 years.

10. It is contended by Mr. Sabharwal, the learned counsel appearing for the respondents that in any event, the license granted to the petitioner could not have been beyond 19.02.2013, that is, five years from 20.02.2008.

11. In view of the above statement that the petitioner had already raised construction in terms of the permission granted to them and as extended from time to time, this Court by an order dated 13.03.2019 had directed

respondent No.3 to conduct an inspection to verify the said claim.

12. Mr. Sabharwal states that in compliance with the said order, an inspection was carried out and a status report has been filed although the same is under objection. He handed over a copy of the same for the Court's perusal. The said status report encloses photographs of the building in question. It is seen from the same that the structure of the building is complete, however, internal finishing work is required to be undertaken.

13. Dr Arun Mohan, learned senior counsel appearing for the petitioner states that no construction work would be undertaken. The petitioner would merely proceed with fixing the doors, windows, electrical fittings and interior finishing.

14. It is not disputed that the petitioners have raised construction in accordance with the permission granted to them. The only question to be examined is whether the construction already raised is required to be demolished on account of the permission being revoked / suspended in the year 2016. It is relevant to mention that entire object of prohibiting construction within the prohibited area of a protected monument is to protect the monument in question. In the present case, the construction activities are already over, and as stated above, in accordance with the permission granted to the petitioners. It is also seen from the photographs annexed with the petition that the buildings in immediate vicinity are higher than the building constructed by the petitioners.

15. Thus, in the peculiar facts of this case, this court is of the view that it would not be apposite to demolish the construction already raised as the same was raised in terms of the permission granted to the petitioners.

16. Insofar as further works are concerned, there is no dispute that

carrying out internal repair and finishing work is not prohibited. Thus, in any event, the petitioners would be at liberty to carry out internal finishing works without making any addition to the contraction.

17. In the aforesaid circumstances, no punitive action is required to be taken against the petitioners for carrying out the internal finishing work and occupying building already raised. It is, however, clarified that the petitioners are prohibited from raising any further construction other than what has already been raised during the extended period of license. It is further clarified that nothing stated in this order would preclude the respondent from taking appropriate action to remove any construction if it is found that the same is beyond the permissible limits as specified in the license issued to the petitioners, that is, beyond the maximum height of 12.35 meters from the ground level, or in excess of the plan or sanction submitted by the petitioners.

18. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

MAY 15, 2019
MK/DR