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

+ **W.P.(C) 68/2017 & CM Nos. 429/2017 & 35053/2017**

ROOHI SAVARA AND ANR

..... Petitioners

Through: Mr Raman Duggal, Mr Shivanshu Kumar, Mr Kunal Kumar and Mr Dipender, Advocates.

versus

ARCHAEOLOGICAL SURVEY OF INDIA
AND ORS

..... Respondents

Through: Mr Jasmeet Singh, CGSC with Mr Srivats Kaushal, Advocates for UOI.
Mr Jamal Akhtar, Panel Counsel for R-3 and R-4/SHO, Hauz Khas.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.05.2019

1. The petitioners have filed the present petition, *inter alia*, impugning an order dated 03.08.2016 issued by the Archaeological Survey of India (ASI), directing the District Collector/District Magistrate to cause removal of the unauthorized construction raised by the petitioner on the property bearing the address - House No.11, Padmini Enclave, Aurobindo Marg, New Delhi – 110016 (hereafter 'the Property'). The petitioner also impugns an order dated 16.03.2016 passed by ASI directing the petitioners to remove unauthorized construction on the Property.
2. It is the petitioners' case that the petitioners have not carried out any construction unauthorizedly. The petitioners claim that petitioner no. 2

(SITAC Estates Pvt. Ltd.) had purchased the Property by a registered sale deed executed on 27.05.2002. The petitioners claim that petitioner no. 2 had carried out certain repairs as permissible under Bye-Law 6.4.1 of the Delhi Building Bye-Laws, 1993, in order to make the Property inhabitable. It is emphatically asserted that the petitioners have not carried out any impermissible additions or alternations to the said property.

3. The learned counsel appearing for the petitioners has drawn the attention of this Court to an order dated 17.08.2012 passed by the Coordinate Bench of this Court in ***W.P.(C) 4797/2012*** captioned '***Roseview Estates Pvt. Ltd. v. SDMC and Ors.***'. He submits that in terms of the said order, ASI was directed to pass a speaking order on the representation preferred by the petitioners. He submits that the said order has not been complied with and ASI has not passed any order on the petitioner's representation as directed.

4. The petitioners claim that the house on the Property in question was constructed in 1967, which was prior to restriction/prohibition imposed under the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

5. There is no dispute that in terms of Section 20C of the said Act, the petitioner would be entitled to carry out repairs and renovations to the Property. However, the petitioner is not permitted to raise any other construction. The controversy whether any unauthorized construction has been raised can be clearly answered by examining the sanctioned plans for the building in question, which the learned counsel for the petitioner states are available.

6. In view of the above, the impugned orders are set aside. The

petitioners shall submit a copy of the sanctioned plan to ASI (respondent no.1). Respondent no.1 is directed to examine the same and ascertain whether the building standing on the Property conforms with the said sanctioned plans. Respondent no.1 shall also consider the petitioner's representation made earlier and pass a speaking order after affording the petitioners an opportunity of being heard.

7. The petition is disposed of with the aforesaid terms. The pending applications also stand disposed of.

8. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

MAY 06, 2019
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