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

+ **W.P.(C) 9590/2017 & CM Nos. 39018/2017 & 39019/2017**

PAWAN KUMAR MALHOTRA

..... Petitioner

Through: Mr Giriraj Subramaniam,
Advocate.

versus

GOVERNMENT OF INDIA AND ANR. Respondents

Through: Mr Dev P. Bhardwaj, CGSC for
R-1/UOI with Mr Jatin Teotia,
Advocate.

Mr G. D. Mishra, Standing
Counsel for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **11.02.2019**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 23.10.2017 passed by the Archaeological Survey of India (ASI), calling upon the petitioner to remove the unauthorized construction carried out at house No. D-32, Third Floor, East Nizamuddin, New Delhi (hereafter 'the Property'), on the ground that it falls within the "regulated area of Humayun Tomb".
2. The impugned order was preceded by a show cause notice dated 28.02.2017, which was responded to by the petitioner by a letter dated 08.03.2017. The petitioner claimed that he was placing only a "porta cabin" on the second floor and, no NOC was required for the same. The petitioner also contended that the Property did not fall within the regulated area of the centrally protected monument of Humayun's Tomb.
3. The aforesaid contentions were not accepted and ASI passed the

impugned order calling upon the petitioner to remove the construction raised on the third floor of the Property. Aggrieved by the same, the petitioner has preferred the present petition. Notice of this petition was issued to ASI, and it was called upon to indicate the points from which the distance of 300 mtrs. has been measured. In compliance with the aforesaid directions, an affidavit has been affirmed on behalf of the ASI indicating that the property in question is located at a distance of 304.16 mtrs. from the southern wall (notified area) of Humayun's Tomb. It is further affirmed that it is at a distance of 224.04 mtrs. from another centrally protected monument – Khan-i-Khana Tomb. It is claimed that the ASI had initiated the action regarding the unauthorized construction by inadvertently mentioning that it is located within the regulated area of Humayun's Tomb, instead of Khan-i-Khana Tomb. Paragraphs 9 and 11 of the counter affidavit are relevant and are set out below:-

“9. It is submitted that the officers of this office has inspected the site/property No.D-32, Nizamuddin East, New Delhi on 28.11.2017. The property under reference is 304.16 mtrs. from Southern Wall (notified area) of Humayun's Tomb, a Centrally Protected Monument (world Heitage site). The measurement has been taken through google image. It is falls beyond the 'regulated area of Humayun's Tomb. Distance from another Centrally Protected Monument i.e. Khan-i-Khana Tombis also measured which is 224.04 mtrs which is falls in the regulated area. The measurement has been taken through google image. The Property under reference is falls in the regulated area of Khan-i-Khana Tomb, a Centrally Protected Monument. Copy of the inspection report and google image is annexed as Annexure R-2 (colly).

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11. That it is respectfully submitted that respondent ASI has initiated action against the said unauthorized construction in the regulated area of Humayun's Tomb, a Centrally Protected Monuemnt inadvertently instead of Khan-i-Khana Tomb, also a Centrally Protected Monument in the regulated area of a Centrally Protected Monuments.”

4. The learned counsel appearing for the petitioner submits that in view of the aforesaid, the impugned order is not sustainable and is liable to be set aside. The aforesaid contention is merited. It is conceded that the impugned order was issued on the erroneous premise that the Property was located within the regulated area of Humayun’s Tomb. However, it is now alleged that the petitioner’s property is located at a distance of 224.04 mtrs. If the said statement is correct, the respondents would be within their rights to initiate necessary action.

5. In view of the above, the present petition is disposed of by setting aside the impugned order. However, it is directed that the counter affidavit filed by the respondent be treated as a show cause notice. The petitioner is at liberty to respond to the same within a period of three weeks from today. ASI shall consider the same and pass an appropriate order within a period of three weeks, thereafter, after affording the petitioner an opportunity to be heard.

6. The petition is disposed of in the aforesaid terms. The pending applications are also disposed of.

VIBHU BAKHRU,J

FEBRUARY 11, 2019/MK