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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU
W.P.No.4124 of 2020

L.Rani

..Petitioner

Vs

- 1 The District Collector
Ariyalur District
Ariyalur - 621 704.
- 2 The Tashildar
Udayarpalayam Taluk
Ariyalur District.
- 3 The President
Gangaikonda Cholapuram Village Panchayat
Udayarpalayam Taluk
Ariyalur District - 612 901.
- 4 The Superintending Archaeologist
Archaeological Survey of India
Chennai Circle, Fort St. George
Chennai - 600 009.

5 P.Senthil

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records culminated in the 3rd respondent's impugned Demolition Notice in Ref.Na.Ka.No. A1/1/2020 dated 08.02.2020 and quash the same.

For the Petitioner	: Ms.M.Karpagam
For the Respondents	: Mr.C.Harsha Raj Additional Govt Pleader for respondents 1 to 3
	: Mr.G.Karthikeyan Assistant Solicitor General for 4th respondent



ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

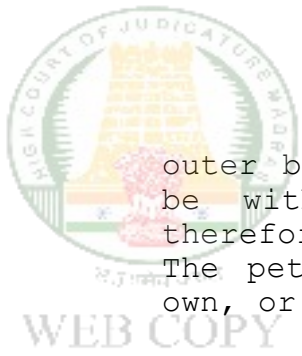
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By this writ petition, a challenge has been made by the petitioner to the notice dated 8.2.2020 issued by the third respondent with a prayer to quash it.

2. The notice dated 8.2.2020 was issued after a judgment of this court in the public interest litigation in W.P.No.3049 of 2019 (P.Senthil v. The District Collector, Ariyalur District, Ariyalur and others) decided on 14.03.2019. A challenge to the notice dated 8.2.2020 has been made mainly on the ground that the proposed construction is situated 100 metres away from the prohibited area where the archaeological monument exists. The respondents stated the distance from the gate, ignoring the fact that it should have been from the structure of the monument and, accordingly, issued the notice to demolish the construction. In view of the above, a prayer is made to set aside the notice impugned in this writ petition.

3. A counter has been filed to the writ petition referring to the judgment of this court in the public interest litigation. During the pendency of a public interest litigation, an action was initiated by the official respondents to remove the unauthorised construction in question. This court while delivering the judgment in the public interest litigation, took note of the initiation of the action by the authorities and issued a direction to proceed further for an appropriate action against the fourth respondent therein for putting up unauthorised construction. The direction aforesaid was given after hearing the petitioner's husband. Therefore, such direction was binding on the petitioner, if the husband died during the interregnum period. That is the first part which is to be taken into consideration as per the argument of learned counsel for the respondents.

4. According to the respondents, the distance of the area where the construction was initially commenced, and now already constructed, ignoring the status quo order is at the distance of 79.4 metres from the boundary wall of the ancient monument. The construction is not permissible in an area up to 100 metres from the protected monument and, accordingly, the petitioner has raised an illegal construction therein. They have contested the argument regarding the measurement of the area from the physical existence of the monument instead of the outer boundary wall. According to the respondents, the measurement is to be taken from the outer boundary wall of the protected monument and, according to them, the measurements shown by them is from the



outer boundary wall of the protected monument. It is found to be within 100 metres from the outer boundary wall and, therefore, notice of demolition of the construction was issued. The petitioner was directed to remove the construction on her own, or else it was to be removed by the official respondents.

5. An allegation has also been made on behalf of the respondents that after the grant of status quo order by this court, the petitioner continued the construction which was at the initial stage when the writ petition was filed. Photograph of the construction has been submitted for perusal of the court as part of the counter. In view of the above, a prayer is made to dismiss the writ petition.

6. We have considered the rival submissions and perused the records.

7. A challenge to the notice dated 8.2.2020 has been made mainly in reference to the distance of the land, where the construction has been raised, from the protected monument. According to the petitioner, the distance has to be measured from the protected monument and not from the outer boundary wall and if it is so measured, the construction put up by the petitioner would be beyond 100 metres from the protected monument.

8. The issue for our consideration is as to whether the distance has to be measured from the outer boundary wall of the prohibited monument or it has to be measured from the physical structure of that monument.

9. The issue has been answered by the Apex Court in the case Archaeological Survey of India v. Narender Anand and others, reported in (2012) 2 SCC 562. The relevant paragraphs are quoted for ready reference:

"50. We may now revert to the impugned judgment in these appeals. In our view, the Archaeological Survey of India is fully justified in making a grievance that the Division Bench of the High Court was not justified in directing the Central Government to review the prohibition contained in the Notification dated 16-6-1992. The High Court's anxiety to maintain a balance between the dire necessity of protecting historical monuments of national and international importance and development of infrastructures is understandable, but it is not possible to approve the fiat issued to the Central Government to review the prohibition contained in the Notification dated 16-6-1992. That



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notification was issued by the Central Government for implementing the policy enshrined in Article 49 of the Constitution and the 1958 Act i.e. to preserve and protect ancient and historical monuments and archaeological sites and remains of national importance.

51. Section 19 of the 1958 Act contains a restriction against construction of any building within the protected area or carrying out of any mining, quarrying, excavating, blasting or any other operation of similar nature in such area. Rules 31 and 32 of the Rules empower the Central Government to declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction. The Central Government must have issued the Notification dated 16-6-1992 after consulting experts in the field and keeping in view the object of the 1958 Act. Therefore, in the name of development and accommodating the need for multi-storeyed structures, the High Court could not have issued a mandamus to the Central Government to review/reconsider the Notification dated 16-6-1992 and that too by ignoring that after Independence a large number of protected monuments have been facing the threat of extinction and if effective steps are not taken to check the same, these monuments may become part of history.

52. One of such monuments is Jantar Mantar, New Delhi. Some of its instruments have become unworkable/non-functional. This is largely due to construction of multi-storeyed structures around Jantar Mantar. Therefore, we have no hesitation to hold that the High Court was not justified in directing the Central Government to review or reconsider the Notification dated 16-6-1992 and, to that extent, the impugned judgment is liable to be set aside. We may add that with the insertion of Sections 20-A and 20-B, the direction given by the High Court for review of the Notification dated 16-6-1992 has become infructuous and the Government is no longer required to act upon the same.

53. The appeal of Respondents 1 and 2 is wholly meritless. The High Court, in our view, has rightly held that even though the Notification dated 3-5-1957 did not become effective because the same was not published in the Official Gazette, the earlier



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Notification issued on 4-10-1956 remained effective and the same was saved by Section 39(2) of the 1958 Act. We may add that even though the Notification dated 3-5-1957 was issued in supersession of the Notification dated 4-10-1956, the same remained alive because of non-compliance with Section 3(2) of the 1904 Act. The High Court's interpretation of the prohibition contained in the Notification dated 16-6-1992 is correct and the distance of 100 m has to be counted from the outer boundary wall of Jantar Mantar which has protected area of 5.39 acres and not the physical structures of the observatory. The High Court has given detailed reasons for rejecting the plea of Respondents 1 and 2 that the provisions of the DDA Act would prevail over those contained in the 1958 Act and we entirely agree with it."

10. The ratio laid down by the Apex Court in the case of Narender Anand (supra) is to count the distance from the outer boundary wall of the monument and not from the physical structure of the Jantar Mantar. In view of the judgment of the Apex Court in the case of Narender Anand (supra), the argument of learned counsel for the petitioner to measure the distance from the physical structure of the temple cannot be accepted. Therefore, whatever the measurements have been disclosed by the petitioner in her writ petition, taking the distance from the physical structure of the temple cannot be accepted.

11. As against the aforesaid, counter has been filed by the respondents which shows the distance between the construction and the outer boundary wall of the protected monument to be 79.4 metres. Thus, the construction was not permissible. The issue aforesaid is not required to be decided again for the reason that in the earlier writ petition, being W.P.No.3049 of 2019, the same was considered and decided by the High Court after hearing the petitioner's husband, as he was alive then. Once the issue has been determined in the earlier writ petition after hearing the parties, the petitioner, being the legal heir of the deceased husband, cannot be allowed to open the issue afresh. It is more so when the action was initiated by the official respondents pursuant to the judgment of the earlier writ petition and on filing of the contempt petition by the petitioner therein. Accordingly, we do not find any merit in the plea raised in this writ petition regarding measurement of the distance, more so when the issue has been concluded in the earlier writ petition in the presence of the petitioner's husband.



12. The writ petition is devoid of merits and the same is dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.4881, 4882 and 7549 of 2020 are closed.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

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- 4 The Superintending Archaeologist
Archaeological Survey of India
Chennai Circle, Fort St. George
Chennai - 600 009.

+1cc to Mr.R.Sampathkumar, Advocate, S.R.No.65618

+1cc to M/s.G.Karthikeyan, Advocate, S.R.No.65364

W.P.No.4124 of 2020

PL(CO)
RGA(14/12/2021)