



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.9822 of 2009

Radhamani

... Petitioner

Vs.

1. The Government of India  
Rep.by its Secretary  
Archaeology Department  
Janpath  
New Delhi - 110 001.
2. The Director-General of Archaeology  
Archaeological Survey of India  
Chennai Circle  
Fort St.George,  
Chennai 600 009.
3. The District Collector  
Coimbatore.
4. Conservation Assistant  
Archaeological Survey of India Dept.  
4/64, A, Srinagar Colony  
Narasothipatty, Salem.
5. The Tahsildar  
Avinasi, Coimbatore District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, by calling for the records relating to proceedings No.33/16/2008/M dated 25.03.2009 issued by the second respondent, quash the same.

For Petitioner : Mr.R.Subramanian

For Respondents: Mr.S.M.Deenadayalan

Standing Counsel for ASI  
for R1, R2 & R4

Mr.U.Bharanidharan for R3 & R5  
Additional Government Pleader



## O R D E R

The subject matter of challenge in the present writ petition pertains to the proceedings of the 2<sup>nd</sup> respondent dated 25.03.2009, wherein, the petitioner was directed to stop the construction activity and to demolish the construction that has already been put up in the property, since the land in question fell within the protected/prohibited area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and Rules made thereunder (hereinafter called as "Act" and "Rules").

2.The case of the petitioner is that she is the absolute owner of the subject property which was purchased by her through a registered Sale Deed dated 25.08.1999. According to the petitioner, after purchasing the property, she applied for building approval before the concerned Panchayat and the building approval was also granted by the Panchayat through proceedings dated 08.02.2002. Thereafter, the construction was put up and the property was assessed to tax. Patta was also issued in favour of the petitioner.

3.The further case of the petitioner is that a notice was issued by the 4<sup>th</sup> respondent on 08.06.2007, whereby, it was informed that S.F.No.142/1 has been notified by the Department and it is a protected area. It was further informed in the notice that a construction has been put up without the permission of the Department in violation of the Act and Rules and hence, the petitioner was called upon to remove the construction put up in violation of the Act and Rules. This notice is said to have been received by the husband of the petitioner and it is stated that he went over to the office of the 2<sup>nd</sup> respondent and undertook to demolish the existing structure.

4.The further case of the petitioner is that a detailed representation was made to the 2<sup>nd</sup> respondent on 02.05.2008, wherein, a request was made by the petitioner to pass orders under Section 35 or Section 6(2)(e), Section 20 and Section 28 of the Act. Since this representation was not considered, a writ petition was filed before this Court in W.P.No.12488 of 2008 and this Court disposed of the writ petition by an order dated 20.05.2008 directing the 2<sup>nd</sup> respondent to consider the representation and to pass orders, within a time frame.

5.The grievance of the petitioner is that the 2<sup>nd</sup> respondent without properly considering the representation, proceeded to issue the impugned order dated 25.03.2009 directing the demolition of the existing structure. Aggrieved by the same, this writ petition has been filed.



6.The 2<sup>nd</sup> respondent has filed a counter affidavit. In the said counter affidavit, a stand has been taken to the effect that S.F.No.142/1 falls within the protected area and hence any construction in the site cannot be done without the permission of the concerned authority. Since the construction of the petitioner was made in the protected area without proper permission, proceedings were initiated for the removal of the illegal structure. It is further stated in the counter affidavit that the site in question is a pre-historic site popularly known as the Pandava Caves and it contains invaluable cultural remains which has to be preserved for posterity. It is further stated that there is a proposal to undertake a large scale excavation at the site and to set up a museum displaying the cultural remnants excavated from the site. In view of the above, the continuation of the structure illegally put up by the petitioner will substantially destroy the site and archaeological evidence and therefore, the 2<sup>nd</sup> respondent had passed the impugned order restraining the petitioner from putting up any structure and to demolish the existing structure.

7.Heard Mr.R.Subramanian, learned counsel appearing on behalf of the petitioner, Mr.S.M.Deenadayalan, learned Standing Counsel for Archaeological Survey of India appearing on behalf of the respondents 1, 2 & 4 and Mr.U.Bharanidharan, learned Additional Government Pleader appearing on behalf of the respondents 3 & 5.

8.The learned counsel for the petitioner submitted that the representation was made to the 2<sup>nd</sup> respondent to pass orders either under Section 35 of the Act by declaring that the site has ceased to be of national importance or under Section 6(2)(e) to acquire property and to pay the compensation on the market value of the property. Without properly considering this representation and the direction issued by this Court, the 2<sup>nd</sup> respondent has mechanically proceeded to issue the impugned order directing the petitioner to demolish the existing structure. The learned counsel submitted that if the property is acquired and the compensation is paid to the petitioner, the petitioner is willing to give up the property and hence, a direction may be issued to the respondents to specifically deal with the representation and to take a decision as per the provisions of the Act.

9.Per Contra, the learned Standing Counsel for Archaeological Survey of India submitted that the Government of India has already issued a Gazette Notification, wherein, the 1958 Act has been revalidated through the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010. By virtue of this revalidation, no construction can be put up in the protected site without the permission of the concerned



authority and hence, the construction made by the petitioner is illegal which deserves to be demolished. The learned counsel further submitted that the petitioner cannot claim as a matter of right for the acquisition of the property and the process of acquisition has to be initiated only by the State Government and the compensation must be fixed and ultimately, the 2<sup>nd</sup> respondent will come into the picture at that point of time for the payment of compensation. The learned counsel further submitted that the representation made by the petitioner for acquisition of land cannot be a license for the continuation of illegal construction in the subject property and the same has to be demolished under the provisions of the Act. Therefore, it was submitted that the impugned order passed by the 2<sup>nd</sup> respondent does not require any interference of this Court.

10. There is no dispute with regard to the fact that S.F.No.142/1 falls in the protected area and Section 19 of the Act makes it very clear that the owner or occupier of a land in a protected area shall not construct any building within the protected area without the permission of the concerned authority. Section 19(2) of the Act also specifically provides that any building constructed by any person within the protected area in contravention of Section 19(1) of the Act, shall be removed by the concerned person within the specified period and if the person refuses, the Collector can take action for the removal of building from the site. The very language used under Section 19 of the Act mandates the removal of any building or structure put up within the protected area.

11. In the present case, the petitioner has purchased the property in the year 1999 and it is seen from records that the sanction was given for the construction of the building only in the year 2002 by the concerned Panchayat and no structure could have been put up in the property without the permission of the concerned authority under the Act and Rules, as mandated under Section 19 of the Act. Admittedly, the petitioner has not taken the permission of the concerned authority before proceeding further to put up the construction and therefore, the impugned proceedings of the 2<sup>nd</sup> respondent dated 25.03.2009 directing the removal of the construction cannot be faulted and it is perfectly in line with Section 19(2) of the Act.

12. The other limb of the argument of the learned counsel for the petitioner pertains to the acquisition of the property under the Act by paying the necessary compensation to the petitioner. Section 6(2)(e) of the Act speaks about an agreement which can be entered into by the owner of the property with the Central Government, whereby, the property can be purchased at its market value. Section 20 of the Act deals with the power of the Central Government to acquire the land in the protected area under the



provisions of the Land Acquisition Act. Section 28 of the Act deals with the assessment of market value for the purpose of paying compensation to the owner of the property. It is not required to go into Section 35 of the Act, since the 2<sup>nd</sup> respondent has made it very clear in the counter affidavit that the site in question is of national importance and it has a pre-historic significance containing invaluable cultural remains. Therefore, there is no question of the site losing its national importance.

13. In the considered view of this Court, the second limb of the argument of the learned counsel for the petitioner pertaining to the acquisition or purchase of the property does not have any nexus with the 2<sup>nd</sup> respondent directing the removal of the structure in the protected area. It is an independent decision that can be taken by the respondent while considering the representation given by the petitioner. While the representation is considered, that does not in any way validate the continuation of the illegal structure, more particularly, when the husband of the petitioner gave an undertaking to the 2<sup>nd</sup> respondent to remove the structure. Hence, the impugned order passed by the 2<sup>nd</sup> respondent on 25.03.2009 does not require any interference of this Court.

14. Considering the facts and circumstances of the case and the request made by the petitioner for a direction to the respondents to either purchase the property or to acquire the property, it is left open to the petitioner to make a fresh representation to the respondents 2 to 4 and the respondents are directed to consider the same independently, strictly in accordance with the relevant Act and Rules and the decision shall be conveyed to the petitioner, within a period of three months from the date of receipt of copy of this order.

15. This writ petition stands dismissed with the above direction. No Costs.

Sd/-

Assistant Registrar (CS IV)

True Copy//

Sub Assistant Registrar

ssr



To

1. The Secretary  
Government of India  
Archaeology Department  
Janpath, New Delhi - 110 001.
2. The Director-General of Archaeology  
Archaeological Survey of India  
Chennai Circle, Fort St.George,  
Chennai 600 009.
3. The District Collector  
Coimbatore.
4. The Conservation Assistant  
Archaeological Survey of India Dept.  
4/64, A, Srinagar Colony  
Narasothipatty, Salem.
5. The Tahsildar  
Avinasi, Coimbatore District.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.32310  
+2ccs to Mr.S.M.Deenadayalan, Advocate, S.R.No.32189  
+1cc to the Government Pleader, S.R.No.32558

W.P.No.9822 of 2009

BR[co]  
NSK/21/06/2022