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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP-437-2023 (O&M).
Decided on: January 10, 2023.

Pooja Saini

.. Petitioner

VERSUS

Union of India and others

.. Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

**PRESENT Mr. Ved Parkash, Advocate,
for the petitioner.**

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition has been filed for seeking quashing of the impugned notice dated 29.12.2022 (Annexure P-7) issued by the Additional Director General to the Government of India, Department of Archaeological Survey of India.

Learned counsel appearing on behalf of the petitioner contends that the petitioner had purchased a constructed residential house on 05.02.2020 in the residential area of village Bahri, Tehsil Thanesar, District Kurukshetra, from one Gurnam Singh son of Harbans Singh. Archaeological sites namely 'Harsh Ka Tila and Sheikh Chilli's Tomb,' both declared as Archaeological sites under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as 'the Act of 1958'), are situated at the entrance of village Bahri. It is contended that the house of

the petitioner is an old construction and needed to be renovated. Some portion of the house is not habitable and poses grave danger and risk to the family members of the petitioner. Accordingly, the petitioner decided to undertake renovation/repair of the said construction. However, one Didar Singh i.e. an Ex-Sarpanch of village Bahri made a complaint to the official respondents alleging an unauthorised construction being raised by the petitioner whereupon the impugned notice has now been sent.

By virtue of the aforesaid notice dated 29.12.2022 (Annexure P-7), the competent authority has called upon the petitioner to show cause as to why the unauthorised construction be not removed by the petitioner and in his absence by the authority itself.

Learned counsel for the petitioner contends that the work initiated by the petitioner was only that of the renovation/response and the same is not a construction as per the Act of 1958. He contends that Section 2 (dc) of the Act of 1958, defines “**Construction**” as under:-

“(dc) “construction” means any erection of a structure or a building, including any addition or extension thereto either vertically or horizontally, but does not include any re-construction, repair and renovation of an existing structure or building, or, construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences, or, the construction and maintenance of works meant for providing supply of water for public, or, the construction or maintenance, extension, management for supply and distribution of electricity to the public or provision for similar facilities for public.”

(emphasis supplied)

Learned counsel places reliance on the judgment of the Hon'ble Supreme Court in the matter of **Ardhendu Kumar Das Vs. State of Odisha and others, reported as 2022 AIR (Supreme Court) 2695**, wherein the aforesaid aspect has been interpreted by the Hon'ble Supreme Court to hold that the work of renovation/reconstruction cannot be equated as construction since the same is not an erection or extension and/or addition to an existing structure.

I have heard the learned counsel for the petitioner and have gone through the documents available with the paper book.

It is not disputed by the petitioner that area in question falls within the protected/notified area under Section 3 and 4 of the Act of 1958. Even though Section 2 (dc) defines construction and it does not include any re-construction, repair and renovation of an erstwhile existing structure or building, however, Section 20C of the Act of 1958 provides for a mechanism to undertake such activities and deals with submission of an application for repair or renovation in prohibited area, or re-construction or repair or renovation in regulated area . Further Section 20D of the Act of 1958 gives out a detailed procedure for grant of permission by the competent authority for carrying out any renovation/repair work within the prohibited/regulated area under the Act of 1958.

The petitioner by having submitted an application before the competent authority for seeking permission to carry out renovation/repair of the construction has clearly subjected himself to the applicability of the provisions of the Act of 1958 and applicability of the Act is not disputed

even during the course of the present petition. The impugned notice is only a show cause notice necessitating the petitioner to be compliant of the law. It has also been noticed that it has been stated in the aforesaid show cause notice that a 'construction' is being raised by the petitioner. This construction cannot be equated to be a case of renovation at this stage, especially when such finding is yet to be recorded by the competent authority. The said issue is an issue of fact to be determined by the Authority and to hold whether it is a case of renovation/repair/reconstruction or a case of raising of construction under the garb of renovation/repair. In any case, as it being only a show cause notice, the petitioner would be at liberty to submit the relevant material and evidence before the competent authority and establish her case that she is not raising a construction within the meaning of Section 2 (dc) of the Act of 1958 and that the activity undertaken by the petitioner is only that of a repair/reconstruction of the construction already existing, without causing any addition, extension or erection of fresh construction.

The petitioner thus would have the remedy to place all the relevant documents before the Competent Authority vis the Additional Director General under the Act of 1958 who is required to take a reasoned decision on such application submitted by the petitioner for seeking permission to carry out the renovation/repair, in accordance with law.

The petition is disposed of as pre-mature, at this stage.

Liberty is, however, granted to the petitioner to approach the competent authority within a period of two weeks and to take all pleas and

to submit all evidence/proof to the competent authority who shall thereupon proceed to pass a final order after affording an opportunity of hearing to the petitioner.

January 10, 2023.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No