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

Judgment reserved on: 07.08.2023

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Judgment delivered on: 17.08.2023

+ **LPA 580/2023 and CM APPL. 40221-40222/2023**

ROSELINE WILSON (DECEASED) & ORS. Appellants

Through: Mr. Virag Kumar Agarwal,
Mrs. Shalini Agarwal & Ms. Naina
Agarwal, Advocates.

versus

ARCHAEOLOGICAL SURVEY OF INDIA & ORS..... Respondents

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Letters Patent Appeal (LPA) is arising out of the common judgment dated 11.07.2023 passed by the learned Single Judge in W.P.(C.) No.2725/2018 titled *Mrs. Roseline Wilson and Ors. Vs. Archaeological Survey of India and Ors.*; and W.P.(C.) No. 8203/2018 titled *Luice M. Jacob Vs. Union of India & Ors.* The learned Single Judge has passed a common judgment deciding both the aforesaid writ petitions as they relate to eviction notices issued by Archaeological Survey of India (ASI) to the writ petitioners/ appellants.



2. The first writ petition being W.P.(C.) No. 2725/2018 was filed by the petitioners (63 in number) stating that they are in possession of property bearing Khasra No.465 known as Christian Compound, Kishan Ganj, Delhi. It is an undisputed fact that the said property is a protected monument of national importance and a notification was issued on 13.12.1922, i.e. Notification No.7331 published in the Gazette of India on 23.12.1922 declaring it to be a protected monument. The writ petitioners even though it was a protected monument known as *D' Eremao Cemetery* were claiming ownership rights based upon the revenue record (*Jamabandi*) for the year 1921-22.

3. The undisputed facts of the case reveal that the Superintending Archaeologist of ASI issued a show-cause notice on 13.09.2005 directing the writ petitioners to show-cause as to why action in respect of eviction should not be initiated against them and they submitted a reply to the notice on 20.09.2005. The ASI after careful consideration of the reply filed by the writ petitioners passed an eviction order dated 17.12.2005 directing demolition of the unauthorized construction in the matter and also directing the writ petitioners to vacate the property within 24 hours.

4. The writ petitioners, being aggrieved by the order passed by the ASI, came up before this Court by filing writ petitions being W.P.(C.) Nos.20917-76/2005 and the said writ petitions were dismissed by an order dated 12.01.2007.

5. The undisputed facts of the case further reveal that an LPA was preferred against the order dated 12.01.2007, being LPA No.123/2007,



wherein the Division Bench of this Court vide order dated 16.10.2008 set aside the order dated 12.01.2007 passed by the learned Single Judge and directed the ASI to pass a reasoned order after granting an opportunity of hearing to all the writ petitioners. The undisputed facts of the case further reveal that the writ petitioners appeared before the Superintendent Archaeologist, however, no reasoned speaking order was passed in the matter.

6. The facts further reveal that a Public Interest Litigation (PIL) being W.P.(C.) No. 539/2016 (being dealt with later in this judgment) was preferred by one of the residents for issuance of an appropriate writ, order, or direction directing the respondents therein to comply with the order dated 16.10.2008 and the said PIL was disposed of vide order dated 02.05.2016 with a direction to the ASI to comply with the earlier order dated 16.10.2008 passed in LPA 123/2007.

7. The writ petitioners contended that the ASI, instead of complying with the earlier order dated 16.10.2008 passed by the Division Bench of this Court, issued fresh show-cause notices/ eviction orders dated 19.08.2016 and 26.08.2016, which led to filing of a Contempt Petition being Cont.Cas(C.) No.20/2017. This Court by an order dated 11.01.2017 again directed the ASI to pass an appropriate order on the issue whether the said property was a part of the *D' Eremao Cemetery*, or not.

8. The ASI again passed an eviction order on 10.01.2017 directing the writ petitioners to vacate the said premises within seven days and to demolish the structures raised thereon. The writ petitioners again preferred



a writ petition being W.P.(C.) No. 594/2017. This Court by an order dated 20.11.2017 set aside the eviction order dated 10.01.2017 with a direction to the ASI to pass a fresh order after granting an opportunity of hearing to the writ petitioners.

9. The ASI after granting an opportunity of hearing to the writ petitioners, then passed a detailed and exhaustive order on 05.03.2018 against which the underlying writ petition being W.P.(C.) No. 2725/2018 was preferred.

10. The other writ petition being W.P.(C.) No. 8203/2018 was preferred by *Luice M. Jacob* stating that his grandfather was placed in possession of the said property by Mr. Alool, Manager of Christian Compound in September 1947. It was stated by the writ petitioner that he is in peaceful and uninterrupted possession of the said property.

11. The same writ petitioner in the aforesaid writ petition, i.e. W.P.(C.) No. 8203/2018 also instituted a Civil Suit being Suit No.87/2005 (being dealt with later in this judgment) for declaration of title and for grant of permanent injunction to protect himself from forceful dispossession, impleading ASI as one of the defendants therein. The said Civil Suit was dismissed vide judgment dated 08.05.2014. An appeal was preferred against the judgment dated 08.05.2014, being RCA No.35/2015 which was dismissed by the learned Additional District Judge, Delhi vide judgment dated 14.12.2015. Thereafter, a second appeal preferred being RSA No.159/2016 also suffered the same fate.



12. Another important aspect of the case is that some other residents had also preferred writ petitions bearing W.P.(C.) Nos.20917-76/2005 (being dealt with later in this judgment) before this Court and they were dismissed with a direction to the ASI to pass a reasoned speaking order.

13. The learned Single Judge has minutely scanned the entire record and after taking into account the arguments/ grounds canvassed by the writ petitioners as well as by the ASI and the other respondents, has arrived at a conclusion that the monument in question is a centrally protected monument of national importance declared as a protected monument vide Notification No.7331 dated 13.12.1922. The learned Single Judge has arrived at a conclusion that the ASI was justified in issuing show-cause notices and directing eviction of the writ petitioners from the archeological site, which is under the ownership of Government of India. The operative portion of the order passed by the learned Single Judge – as contained in paragraphs 34 to 45, reads as under:

“34. This Court has heard the rival submissions advanced by the learned counsel for both the parties and also perused the documents placed on record.

35. In both these Writ Petitions, the Petitioners have stated to be the residents of Christian Compound situated at Kishan Ganj, Delhi. It is the contention of ASI that the Petitioners are unauthorized occupants of a land which forms part of D'Eremao Cemetery, Kishan Ganj, Delhi, a centrally protected monument declared of national importance vide Notification No. 7331 dated 13.12.1922 and published in the Gazette of India on 23.12.1922. A perusal of the record shows that the Petitioners were initially claiming ownership over the said land by virtue of adverse possession. However, later they shifted their stand and claiming ownership of the said land based on



entries in the Jamabandi. According to the Petitioners, the land in question is a private land owned by Armenian Association and the Government never acquired the said land. It is their case that they were in possession of the said land from 1947 onwards. Further the Petitioners are disputing the location of the D'Eremao Cemetery, Kishan Ganj.

36. A perusal of the record further shows that ASI earlier in the year 2005 initiated eviction proceedings against the Petitioners. Challenging the said eviction proceedings, two parallel proceedings were initiated by the Petitioners.

37. The Petitioners in W.P.(C) 2725/2018 approached this Court in W.P.(C) 20917-76/2016. The learned Single Judge of this Court vide order dated 12.01.2007 dismissed the said Writ Petition. The Petitioners preferred an LPA bearing No. 123/2007 titled as 'Roseline Wilson & Ors v. UOI'. The Hon'ble Division Bench vide order 16.10.2008 set aside the order passed by the learned Single Judge with a direction to the ASI to once again consider the reply dated 20.09.2005 filed by the Petitioners and pass a speaking order after affording an opportunity of hearing to the Petitioners. In the meantime, the parties were directed to maintain status quo qua the possession and construction of the said property. In the meanwhile, the Petitioner in W.P.(C) 8203/2018, filed a Civil Suit bearing No. 87/2005 seeking a declaration and permanent injunction against ASI and other Defendants therein to the effect that the Petitioner is the owner of the property in question by virtue of adverse possession. Learned Civil Court, vide Judgment dated 08.05.2014 negated the said plea and dismissed the said suit. Thereafter, an appeal bearing RCA No. 35/2015 was preferred by the Petitioner, which was also dismissed by learned Additional District Judge, Delhi vide Judgment dated 14.12.2015. A second appeal bearing RSA No. 159/2016 was also preferred by the Petitioner, but the same was also dismissed by this Court vide Judgment dated 19.07.2016. Hence the finding of the learned Civil Court attained finality.



38. ASI failed to pass a speaking order in compliance of the directions of this Court dated 16.10.2008 in LPA No. 123/2017 and hence, the Petitioners in W.P.(C) 2725/2018 filed a Contempt Petition against ASI alleging non-compliance of the order dated 16.10.2008. This Court disposed of the said Contempt Petition with a direction to ASI to comply with the Order dated 16.10.2008 passed by Hon'ble Division Bench of this Court. ASI passed a speaking order dated 10.01.2017 holding that the Petitioners are illegal encroachers of the said property in question. In view of the speaking order dated 10.01.2017, ASI again initiated eviction proceedings against the Petitioners. The Petitioners assailed the said eviction proceedings before this Court in W.P.(C) 594/2017. This Court vide Order dated 20.11.2017, disposed of the said Writ Petition with a direction to pass a fresh speaking order. ASI again passed a detailed speaking order dated 05.03.2018 directing the Petitioners to vacate the said premises within 7 days.

39. In view of the various litigations, it is evident that the Petitioners miserably failed to establish their title over the said land before various Judicial foras. In fact, the Petitioners are unauthorizedly occupying the land which forms part of D'Eremao Cemetery, Kishan Ganj, Delhi.

40. The Petitioners in W.P.(C) 2725/2018 raised an argument before this Court that the Petitioners are the owners of the said Property and the same is proved by Jamabandi for the year 1921-22. It is their claim that the Jamabandi shows the name of their forefather, Mr. Mohd. Ibrahim, as the owner of the said Property. It was further stated during the course of arguments by learned counsel appearing for the Petitioners that they have placed several documents on record showing as to how they are the successors of Mohd. Ibrahim. Further, it was also their contention that ASI did not even mention about the Jamabandi relied upon by Petitioners in the Impugned Eviction Orders.

41. This Court has perused the Jamabandis for the years 1966-67 and 1989-90 filed by ASI along with its additional



affidavit. The name of Mr. Mohd. Ibrahim is nowhere mentioned in the said Jamabandis. Further, these Jamabandis also show that the Government is the owner of the said Property. This Court has also perused the Jamabandi for year 1921-22 which also shows that the Government is the owner of the said Property. Thus, the contention of Petitioners that they are the owners of the said Property on the basis of Jamabandi is misconceived. Further, this Court failed to find any document on record which shows that the Petitioners are successors of Mr. Mohd. Ibrahim, neither the learned counsel for Petitioners was able to show to this Court any such document. Nonetheless, it is well settled law that the ownership of an immovable property cannot be decided on the basis of Jamabandi. This Court does not appreciate the reliance of Mr. Virag Agarwal upon the decision in Partap Singh (supra) in order to support his contention that Petitioners can be declared as owners of the suit property on the basis of Jamabandi itself. This authority of Hon'ble Supreme Court instead states about the presumption of truth when attached to jamabandi can be rebutted. It nowhere states that ownership can be decided on the basis of Jamabandi. Nonetheless, it is a well settled position of law that entry in a Jamabandi does not confer title on a person whose name appears in that Jamabandi.

42. The ownership dispute of the Petitioner in W.P.(C) 8203/2018 was agitated before the learned Civil Court. There is no dispute that the Petitioners in W.P.(C) 2713/2018 are similarly situated as Petitioner in W.P.(C) 8203/2018. The finding of the learned Civil Court in the said proceedings has already attained finality. As discussed herein above, the Petitioners failed to produce any document, whatsoever, to establish their title. Jamabandis placed on record show that the land belongs to the Government. Even otherwise, no ownership can be conferred on the Petitioners by virtue of the alleged entries in the Jamabandi. The issues raised by the Petitioners are already settled by various Judicial foras in different litigations initiated by the Petitioners themselves.



43. *In view of the detailed discussion hereinabove, it is evident that the Petitioners miserably failed to establish their ownership over the said land. Petitioners failed to place on record any documents to show that the said land does not form part of D'Eremao Cemetery, Kishan Ganj, Delhi, which is a centrally protected monument declared of national importance vide Notification No. 7331 dated 13.12.1922 and published in the Gazette of India on 23.12.1922. ASI has placed on record the official site plan of D'Eremao Cemetery, Kishan Ganj, Delhi. There is no dispute qua this site plan. ASI passed the Impugned Eviction Orders after affording proper opportunity of hearing to the Petitioners.*

44. *Accordingly, the present Writ Petitions are hereby dismissed as the Petitioners have not been able to show any impunity in the Impugned Eviction Orders.*

45. *Pending applications, if any, are disposed of in above terms. No orders as to costs"*

14. Learned counsel for the appellants has vehemently argued before this Court that there are a large numbers of Christian families living at Christian Compound, Kishan Ganj, Delhi since time immemorial and they are in possession of the property bearing Khasra No.465 admeasuring 5 Acres and 17 Biswas.

15. He has also vehemently argued before this Court that the appellants are being evicted from the property in question on the ground that *D' Eremao Cemetery* is a protected monument and they have got no right, title or interest in respect of the aforesaid private property.

16. Learned counsel for the appellants has then argued that the revenue record (Jamabandi) for the year 1921-22 of the property bearing Khasra No.465 admeasuring 5 Acres and 17 Biswas makes it very clear that the said



property was under the possession of the appellants so much so the appellants were issued Aadhaar Cards, Voter ID Cards, Passports, Electricity Bills, Water Bills and Gas Bills with the subject property as their address.

17. It has been stated that on 01.04.2005, some officials of the ASI who wanted to repair the Chapel threatened the appellants regarding their forcible eviction. Finally, a show-cause notice was issued to them on 13.09.2005 under the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR Act, 1958).

18. Learned counsel for the appellants stated before this Court that they did file a reply to the show-cause notice and, finally, eviction order was passed on 17.10.2005. It is only after a long history of litigation that the ASI finally passed an order on 05.03.2018 directing eviction of the appellants, which has been affirmed by the learned Single Judge.

19. Learned counsel for the appellants has vehemently argued before this Court that the order passed by the learned Single Judge is wholly arbitrary, illegal, unfair, unjust and in complete violation of the principles of natural justice and fairplay, and hence, deserves to be quashed by this Court.

20. Learned counsel for the appellants has vehemently argued before this Court that except for producing a vague Notification No.7331 dated 13.12.1922, the ASI has never produced any document providing the details of Khasra Number, Khatoni Number, Khewat Number reflecting total area and boundaries of *D' Eremao Cemetery*, and therefore, once the identity of the land was not established by the ASI, by no stretch of imagination, could



the order of eviction have been passed by the ASI in the manner and method with which it has been done and the learned Single Judge has erred in law & facts in dismissing the writ petitions.

21. Learned counsel for the appellants has also argued before this Court that as no land acquisition proceedings took place, neither any compensation was paid to the land owners nor the land was transferred/ mutated in favour of the ASI, and therefore, as the writ petitioners were in possession of the land in question, by no stretch of imagination, could any order directing their eviction have been passed by the ASI in the manner and method with which it has been done.

22. Learned counsel for the appellants has further contended that the show-cause notice dated 13.09.2005 was *void-ab-initio* and was issued without any lawful authority as prescribed under Section 19(1) of the AMASR Act, 1958 and the learned Single Judge has failed to consider the ground raised by the petitioners while deciding the writ petition.

23. Learned counsel for the appellants has raised another ground stating that the writ petitioners were not claiming right in the property based on adverse possession, and in those circumstances, as they were not occupying the portion which was part of the *D' Eremao Cemetery*, no order of eviction could have been passed by the ASI.

24. Learned counsel for the appellants has vehemently argued that the Record of Rights, i.e. *Jamabandi* issued as per Section 31 and Section 44 of the Punjab Land Revenue Act, 1887 was applicable to Delhi at the relevant time and the *Jamabandi* for the year 1921-22 establishes that the property in



question was a private property, and therefore, the order of eviction is bad in law and the learned Single Judge has failed to consider this vital aspect while deciding the writ petitions.

25. It is also argued that as per Section 110 of the Indian Evidence Act, 1872, the burden of proof was upon the ASI to establish that the appellants/ writ petitioners were not the owners of the property in question and the ASI has failed to discharge the burden and the learned Single Judge has also not at all considered this ground while deciding the matter.

26. Learned counsel for the appellants has further contended that the Notification regarding *D' Eremao Cemetery* was never published in the Official Gazette, nor the area was declared as "Prohibited Area" or "Regulated Area" under Section 20B of the AMASR Act, 1958, and therefore, as the appellants were in possession of the property in question, they are the titleholder of the subject property and not the ASI/ Government of India.

27. In respect of the Civil Suit instituted by *Luice M. Jacob*, i.e. Civil Suit being Suit No.87/2005 titled *Luice M. Jacob Vs. Union of India & Others*, it has been contended by learned counsel for the appellants that the said suit was instituted by *Luice M. Jacob* in his personal capacity and merely because *Luice M. Jacob* was not able to prove his title before the Trial Court nor before the First and the Second Appellate Court, it does not mean that the land in question was a Government land.

28. Learned counsel for the appellants has vehemently argued before this Court that various documents like Voter ID Cards, Passports, Water and



Electricity Bills, Ration Card, Birth and Death Certificates issued in favour of the appellants do mention and establish that the appellants are residing over the property in question since time immemorial and the learned Single Judge has erred in law and facts in dismissing the writ petitions and upholding the order of eviction.

29. Learned counsel for the appellants has also argued before this Court that the learned Single Judge was carried away by the observations made by the Courts in respect of the Civil Suit as well as the First Appeal and the Second Appeal and merely because Civil Suit of one of the occupants was dismissed, the learned Single Judge has dismissed the writ petition preferred by all the other petitioners.

30. It has also been argued that the learned Single Judge has not appreciated the evidence on record in its true perspective and the petitioners – who are in possession of the property since time immemorial, are being thrown out on account of the order passed by the ASI.

31. It has also been argued that the Superintendent Archeologist was not having any jurisdiction to issue a show-cause notice in the matter, and therefore, the consequential order of eviction is bad in law and the order of eviction and the order passed by the learned Single Judge deserve to be set aside.

32. The appellants have prayed for the following reliefs in the present LPA:-

“(A) Pass an order thereby admitting the present Letters Patent Appeal and summoning the case file of W.P. (C)



No.2725 of 2018 titled as "Mrs. Rosline Wilson & Ors. Vs. Archaeological Survey of India & Ors.";

(B) Pass an appropriate order or directions thereby setting aside/quashing the impugned undated judgment passed by the Ld. Single Judge of this Hon'ble Court, annexed as Annexure - A;

(C) Pass an order or directions thereby restraining the respondents and its officials etc. from taking any action in pursuance of impugned undated judgment and/or order dated 05-03-2018 passed by the respondent No.1, annexed as Annexure — P;

(D) Pass an order or directions thereby restraining the respondents and its officials etc. from interfering in the peaceful possession of the appellants over the property bearing Khasra No.465 admeasuring 5 acres and 17 biswas and popularly known as Christian Compound, Kishanganj, Delhi — 110007 and shown in red colour in the site plan annexed as Annexure - P - 2;

(E) Pass such further appropriate writ, order (s) or directions as this Hon'ble Court may deem fit in the facts and circumstances of the present case."

33. Heard learned counsel for the appellants at length and perused the record.

34. The undisputed facts of the case reveal that the *D' Eremao Cemetery* is a monument of national importance and located at Kishan Ganj, Delhi. The said *D' Eremao Cemetery* was declared as a monument of national importance vide Notification No.7331 dated 13.12.1922 and the same was published in the Gazette of India on 23.12.1922. The land in dispute — which is part of the protected monument, is situated in Khasra No.465.



35. The notification dated 13.12.1922 is reproduced as under:

“CHIEF COMMISSIONER, DELHI

NOTIFICATIONS

DELHI, the 13th December, 1922

No. 7319

No. 7331 – Education – In exercise of the power confirmed by Section 3(1) of the Ancient Monuments Preservation Act (VII of 1904), the Chief Commissioner is pleased to confirm his Notification No. 5956 – Education dated the 5th October, 1922 and to declare the undermentioned cemeteries to be protected monuments within the meaning of the said Act-

District	Locality	Name and description of monuments	Situations			
			North	South	East	West
Delhi	Imperial City	Barakhamba Road	OIP Railway Godown	Imperial Delhi Municipal Land	OIP Railway Land	OIP Railway Land
Delhi	Old Raipur Cantonment	Raipur (Mutiny Cemetery)	Prince's Road	Deh Notified Committee Delhi	Deh Notified Committee Delhi	Deh Notified Committee Delhi
Delhi	Kashmeri Gate	Ncholson (or Kashmeri Gate Cemetery)	House	Estate Road	C.E. Garden	Deh Notified Committee Delhi
Delhi	Kashmeri Gate	Lothan Road Cemetery	Municipal Conservancy Store Godown	L Road	Public Land and Polce Post No.	Servant Quarter of General
Delhi	Alpur Camping Group	Alpur Cemetery	Curable Land of Alpur Village	Waste land of Alpur and ZndpuVlge	Waste Land of Zndur Village	G.T. Road
Delhi	Kishanaganj Railway Stn.	D' Eremo Cemetery	L. Manohar Lal	Government Garden	L Manohar Lal	U. Road
Delhi	Kishanganj	Tomb of Capt Mac Bamatt & others who fall in a n attack on Kishanganj	Narul Land	Narul Land and the Delhi Road	Narul Land and Mutiny Memorial	N. Land

”



36. On 13.09.2005, a show-cause notice was issued by the ASI for removal of illegal occupation and unauthorized construction of a part of the *D' Eremao Cemetery*. The show-cause notice was issued by the ASI keeping in view the statutory provisions as contained under the AMASR Act, 1958. Section 9 of the said Act reads as under:

“9. Failure or refusal to enter into an agreement.—(1) If any owner or other person competent to enter into an agreement under section 6 for the maintenance of a protected monument refuses or fails to enter into such an agreement, the Central Government may make an order providing for all or any of the matters specified in sub-section (2) of section 6 and such order shall be binding on the owner or such other person and on every person claiming title to the monument from, through or under, the owner or such other person.

(2) Where an order made under sub-section (1) provides that the monument shall be maintained by the owner or other person competent to enter into an agreement, all reasonable expenses for the maintenance of the monument shall be payable by the Central Government.

(3) No order under sub-section (1) shall be made unless the owner or other person has been given an opportunity of making a representation in writing against the proposed order.”

37. It is an undisputed fact that the monument in question is a protected monument and the area in question is a protected area, and in those circumstances, the show-cause notice was issued by the ASI for removal of illegal occupation and unauthorized construction on the part of the *D' Eremao Cemetery*. A reply was filed in the matter by the persons occupying the area, or persons in illegal occupation of the area/ illegal occupants of



unauthorized construction. An order in respect of demolition was thereafter passed on 17.12.2005 by the Director General, ASI.

38. The appellants before this Court and all other occupants/ unauthorized occupants being aggrieved by the eviction/ demolition order came up before this Court by filing W.P.(C.) Nos.20917-76/2005 titled ***Roseline Wilson & Ors. Vs. The UOI & Ors.,*** and contended before this Court that the property in question is not *D' Eremao Cemetery* and the occupants have become owners thereof by way of adverse possession. It is an undisputed fact that the writ petitions preferred by the unauthorized occupants were dismissed by this Court vide order dated 12.01.2007.

39. The occupants/ unauthorized occupants being aggrieved by the order dated 12.01.2007 dismissing the writ petition preferred LPA No.123/2007 titled ***Roseline Wilson & Ors. Vs. UOI & Ors.,*** wherein the Division Bench of this Court passed a detailed order dated 16.10.2008 and paragraphs 9 to 16 of the said order read as under:

“9. The learned Single Judge after analysing the provisions of the Ancient Monuments Act 1904, State Re-organization Act 1956 and the Ancient Monuments Act 1958 came to the conclusion that the D'Eremao Cemetery was a protected monument and therefore the respondents were justified in issuing the notice dated 17th October 2005. The learned Single Judge held that the plea of adverse possession of the appellants was not tenable and that the appellants were unable to prove it as a fact. The learned Single Judge concluded:

“22. In totality of the facts and circumstances the D'Eremao cemetery was declared as a protected monument under the AMASR Act, 1904 and which is protected monument in terms of Section 3 of the



AMASR, 1958 and the petitioners are encroached within the protected area of the monument. Consequently, the order dated 17.10.2005 passed by the respondents cannot be faulted on any of the grounds raised by the petitioners. There are, therefore, no grounds to exercise of jurisdiction under Article 226 of the Constitution of India against the said order dated 17th October 2005 and the respondents cannot be prohibited from proceeding and implementing the said order against the petitioners. The writ petition is, therefore, without any merit, it is therefore dismissed.”

10. We have heard the submissions of Mr. R. Vasudevan, learned counsel for the appellants. None has appeared for the respondents. It may be mentioned that by an order dated 8th September 2008 while admitting the appeal, this Court had directed the respondents 2 and 3 to file their counter affidavits in respect of the appellants’ contention that the structure in question is not the D’Eremao Cemetery. Till date no such counter affidavit has been filed. .

11. Earlier by an order dated 9th February 2007 this Court had directed the status quo to be maintained in respect of the possession of the property in question while making it clear that no construction shall be carried out by the appellant on the property. .

12. Mr. Vasudevan refers to the reply dated 20th September 2005 given by the appellants in response to the show cause notice dated 13th September 2005 issued by the ASI where a categorical stand was taken that the property in their possession is not the D’Eremao cemetery as wrongly mentioned in the reply. The order dated 17th October 2005 passed by the ASI directing eviction of the appellants’ proceeds on the footing that no reply was sent by the appellants in response to the show cause notice dated 13th September 2005. This stand belied by the endorsement on the copy of the reply (which has been



enclosed Annexure P- 9). Further, in the counter affidavit to the writ petition there is no denial of the receipt of the reply but only to the contents thereof. It, therefore, appears that in passing the order dated 17th October 2005 the ASI did not consider the stand taken by the appellants that the property under their occupation is not the D'Eremao cemetery. .

13. The very first ground in the memorandum of appeal is that the learned Single Judge erred in accepting the contention of Respondents 2 and 3 that the portion under the occupation of the appellants is the D'Eremao cemetery which is a protected monument. Since this is a factual dispute raised by the appellants, it was required to be determined by the ASI before proceeding to pass the order dated 17th October 2005. This aspect has not been considered at all by the learned Single Judge. .

14. We also find that the learned Single Judge has proceeded on the footing that the D'Eremao cemetery, which is a protected monument, is in fact occupied by the appellants. This has been centrally put in issue in the reply dated 20th September 2005 sent by the appellants to the ASI in response to the show cause notice, but not considered by the ASI while passing the eviction order. In the circumstances, we are of the considered view that the ASI should once again consider the case of the appellants and in particular the tenability of their stand that the portion in their occupation is not the D'Eremao cemetery which is a protected monument. .

15. Accordingly, the impugned order dated 12th January 2007 passed by the leaned Single Judge is set aside and the order dated 17th October 2005 passed by the ASI are hereby quashed. A direction is issued to the ASI to once again consider the reply dated 20th September 2005 of the appellants, a copy of which is annexed to the writ petition as Annexure P-9, offer an opportunity of hearing to the appellants or their representatives and thereafter pass a reasoned order afresh within a period of four weeks from today. The reasoned order will be communicated to the appellants within one week



thereafter. Till such time, the interim order dated 9th February 2007 passed by this Court in appeal will continue to operate. It is needless to mention that it will be open to the appellants to seek whatever appropriate remedies are available to them in law if they are aggrieved by the fresh order passed by the ASI pursuant to the present judgment. .

16. With the above directions, the appeal is allowed with no order as to costs. The pending applications also stand disposed of. ”

40. A Division Bench of this Court in LPA 123/2007 set aside the order dated 17.10.2005 passed by the ASI and the order dated 12.01.2007 passed by the learned Single Judge. A direction was also issued to the ASI to consider the reply submitted by the writ petitioners/ appellants, and thereafter, to pass a fresh order after granting an opportunity of hearing to the writ petitioners/ appellants/ unauthorized occupants.

41. Another important aspect of the case is that a PIL was also preferred in the matter by one *Raj Kumar Tanti* and the same was registered as W.P.(C.) No. 539/2016 titled as ***Raj Kumar Tanti Vs. Union of India & Ors.*** The said PIL was filed for issuance of a direction to the ASI to comply with the order dated 16.10.2008 passed by this Court in LPA No.123/2007, and to issue directions for evicting the unauthorized occupants and for demolition of illegal structures. A Division Bench of this Court on 02.05.2016 disposed of the said PIL. The said order dated 02.05.2016 reads as under:

“1. The present public interest litigation is filed seeking a writ of mandamus directing the respondents to comply with the order dated 16.10.2008 passed by this Court in LPA No.123/2007 and to issue directions to the respondents to take



action against the illegal structures by demolishing the same. The petition pertains to D'Eremao Cemetery, Kishan Ganj, Delhi (in short the 'Cemetery') which is a monument protected under the provisions of the Ancient Monuments Act, 1904 and Ancient Monuments Archaeological Sites and Remains Act, 1958 and other statutory provisions.

2. In the writ petition, it is contended that the said Cemetery vide Notification dated 13.12.1922 was declared to be a protected monument. On 13.09.2005 respondent No.3, namely the Archaeological Survey of India (in short 'ASI'), issued a show cause notice to unauthorized occupants/encroachers in the Cemetery for eviction/demolition of unauthorized constructions/structures. On 17.10.2005, respondent No.3/ASI passed eviction orders. However, some of the unauthorized occupants/encroachers filed 'writ petition being W.P.(C) 20917-76/2005, titled as "Roseline Wison & Ors. v. Union of India & Ors.'" before this Court for quashing the eviction orders. The said writ petitions were dismissed on 12.01.2007. Thereafter, the unauthorized occupants/encroachers filed an appeal being LPA No.123/2007, titled as 'Roseline Wison & Ors. v. Union of India & Ors.' before the Division Bench of this Court. The said LPA was disposed of on 16.10.2008. Relevant para of the said order reads as follows:

"15. Accordingly, the impugned order dated 12th January, 2007 passed by the learned Single Judge is set aside and the order dated 17th October, 2005 passed by the ASI are hereby quashed. A direction is issued to the ASI to once again consider the reply dated 20th September, 2005 of the appellants, a copy of which is annexed to the writ petition as Annexure P-9, offer an opportunity of hearing to the appellants or their representatives and thereafter pass a reasoned order afresh within a period of four weeks from today. The reasoned order will be communicated to the appellants within one week thereafter. Till such time, the interim order dated 9th February,



2007 passed by this Court in appeal will continue to operate. It is needless to mention that it will be open to the appellants to seek whatever appropriate remedies are available to them in law if they are aggrieved by the fresh order passed by the ASI pursuant to the present judgment.”

These are the directions, which the present writ petitioner seeks to have enforced.

3. *It is urged that despite these directions, the respondents have not taken any steps to stop illegal construction activity or remove encroachments. The petitioner states that in 2015 he visited the site and found that some encroachers are occupying the area and various illegal constructions/structures have been raised in the area even after order dated 16.10.2008.*

4. *Respondent No.3/ASI has filed a status report. In the status report, respondent No.3/ASI has tendered unconditional apology for the delay in the implementation of the order dated 16.10.2008 passed by this Court in LPA No.123/2007. The status report also states that on a survey being conducted of the monument in 2005, one Luice Jacob, himself an encroacher filed a suit before the Court of the learned ADJ, New Delhi in August, 2005 wherein an interim order was passed. The status report further states that respondent No.3/ASI issued notice to 52 other people who were found to be encroaching on 13.09.2005. These persons also filed writ petitions. The writ petitions/LPAs and suits are now disposed of. The delay took place due to these litigations.*

5. *The learned counsel appearing for respondent Nos.2 and 3 submits that presently there are no legal proceedings filed by any of the encroachers pending and that respondent No.3/ASI would issue fresh show cause notice to all the parties and after giving hearing to all the parties, would take a decision as per law.*



6. *In view of the above statement/submission of the learned counsel appearing for respondent Nos.2 and 3, we deem it appropriate to issue the following directions:*

- (i) *Respondent No.3/ASI will take expeditious steps for eviction of the unauthorized occupants and demolition of the unauthorized constructions from the site in question.*
- (ii) *Necessary compliance will be made of the directions passed by this Court on 16.10.2008. The parties to the appeal where this Court passed the order dated 16.10.2008 would be entitled to file any fresh response, if they so desire. Notice to the said effect will be sent by the ASI. This further opportunity is being given to them in view of the fact that much time has lapsed since the earlier order of the Division Bench dated 16.10.2008.*
- (iii) *If there are other unauthorized occupants in the area who entered the premises after the survey being conducted by respondent No.3, they would be dealt with as per law for the purpose of eviction/demolition.*
- (iv) *Respondent No.3 will ensure the compliance of these directions within a period of four months from today. In case, any police assistance is required, the SHO of the area concerned is directed to ensure the necessary police assistance.*

In view of the above directions, the present writ petition is disposed Off.”

42. The Director General, ASI finally passed an order on 10.01.2017 in compliance of the order dated 16.10.2008 passed by a Division Bench of this Court in LPA 123/2007. The order dated 10.01.2017 was again subjected to judicial scrutiny by filing W.P.(C.) No. 594/2017 titled ***Roseline Wilson and Ors. Vs. Archaeological Survey of India and Ors.,*** wherein the learned Single Judge on 20.11.2017 passed the following order:



“4. Section 19 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereafter ‘the Act’), which sets out the provision for removal of buildings from protected area inter alia reads as under:-

“19. Restrictions on enjoyment of property rights in protected areas.—

(1) No person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining, quarrying, excavating, blasting or any operation of a like nature in such area, or utilise such area or any part thereof in any other manner without the permission of the Central Government: Provided that nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for purposes of cultivation if such cultivation does not involve the digging of not more than one foot of soil from the surface.

(2) The Central Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal.”

5. A plain reading of Section 19(2) of the Act indicates that the Central Government is empowered to direct removal of any building which is constructed by a person within a protected area in contravention of the provisions of Section 19(1) of the Act.

6. In view of the above, the concerned officer who exercises the delegated power of the Central Government was required to hear the petitioners and pass the necessary orders.



7. *In Gullapalli Nageshwar Rao and Others v. Andhra Pradesh State Road Transport Corporation and Anr.: AIR 1959 SC 308, K Subba Rao, J. had observed that “If one person hears and another decides, then personal hearing becomes an empty formality”. In Rasid Javed v. State of U.P: (2010) 7 SCC 781, the Supreme Court relied upon its earlier decision in Gullapalli Nageswara Rao (supra) and observed that “a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted”.*

8. *The above principle may not be applicable in all administrative matters, however as observed by the Supreme Court in A.K. Kraipak v. Union of India: 1969 (2) SCC 262 that “the dividing line between an administrative power and quasi-judicial power is quite thin and is being gradually obliterated”. Undisputedly, whether the function is purely administrative or quasi-judicial, the object is to arrive at a just decision.*

9. *In the present case, the decision of the Central Government under section 19(2) of the Act has serious consequences on the persons being removed from the protected area and therefore, the petitioners were also afforded a hearing. However, it is not disputed that the Director General of ASI - the authority who has passed the impugned order - had not heard the petitioners.*

10. *Thus, without going into the merits of the disputes or whether the property in question belongs to ASI or not, the impugned order is set aside and the matter is remanded for re-consideration in accordance with law.*

11. *The concerned officer – the officer who exercises the delegated power of the Central Government under Section 19(2) of the said Act – shall issue a notice, providing the petitioners an opportunity to be heard and pass an order after hearing the petitioners. It is clarified that no adjournments would be granted to the petitioners for the aforesaid purpose, and in the event the petitioners are not represented on the date*



fixed, their right to be heard would stand closed and the concerned officer shall proceed to pass an order as he deems fit.

12. It is further directed that the concerned officer shall fix a hearing within a period of six weeks from today and the concerned officer shall pass the final order within a period of eight weeks thereafter.

13. The petition stands disposed of with the aforesaid observations.

14. It is clarified that in the meanwhile status quo to the property in question shall be maintained.

15. Order dasti.”

43. The learned Single Judge by the aforesaid order directed the concerned officer to issue a notice, to provide an opportunity of hearing and to pass a fresh order thereafter.

44. In compliance of the orders passed by this Court, the respondent/ ASI has granted opportunity of personal hearing to all those persons to whom notices were issued under the AMASR Act, 1958 and has considered all the documents filed by the occupants.

45. The Director General, ASI has finally passed a speaking order dated 10.01.2017 after granting an opportunity of hearing to all the occupants and the conclusions with reasons of the order passed by the Director General, ASI – as contained in paragraphs 13 to 38, are reproduced as under:

“CONCLUSION WITH REASONS

13. I have carefully and meticulously gone through the reply dated 20.09.2005 (which is Annexure P-9 to the WP(C)



no.20917-76/2005 ordered to be considered in LPA No. 123/2007 'at the time of passing of the speaking orders) and also the all other letters/replies filed by Mr. Vinod Kumar (for himself and as Authorised Representative of the unauthorised occupants in D'Eremao Cemetery, a centrally protected monument) in the office of ASL and the defence taken during the personal hearings to the effect that property in question is not a D'Eremao Cemetery, a centrally protected monument which is declared as of national importance vide notification no. 7331 dated 13.12.1922 and published in the Gazette of India on 23.12.1922.

14. So far concerning we reply dated 20.09.2005 (Annexure P-9), it is observed that the said reply was filed by one Mr. Luice M. Jacob in response to the show cause notice dated 13.09.2005 received by Mr. Mukesh Jacob and 39 other unauthorized occupants in the D'Eremao Cemetery, a centrally protected monument and it is stated in the said reply that suit no. 87/2005 titled as "Mr. Luice M. Jacob Vs. Union of India & Ors." is pending in the court of Ms. Ravinder Bedi, Ld. Civil Judge, Tis Hazari Courts, Delhi and further stated that property in question is a Armenian Cemetery and in possession of the said Mr. Luice M. Jacob and 40 other persons who are his relatives and the same is not a D'Eremao Cemetery, a centrally protected monument site. It is further claimed that the Armenian Cemetery/Christian Compound has never been declared as monument of national importance and it is further propounded in the said reply that the Armenian Cemetery was occupied by the members of Christian community in the year 1947 and detailed facts in this regard is stated to have been mentioned in the plaint dated 04.04.2005 of civil suit bearing no. 87/2005, copy of which was attached with it and further claimed that in view of the pendency of civil suit no. 87/2005, issuance of show-cause notices amounts to an interference in pending judicial proceedings and further requested therein that show-cause notices issued by the A.S.I. to Mr. Mukesh Jacob and 39 other occupants may kindly be treated as cancelled and no further action be taken against any of the occupants.



15. Upon perusal of the plaint dated 04.04.2005 of civil suit no. 87/2005, it is observed that said civil suit was filed by Mr. Luice M. Jacob seeking to declare him as owner of the cemetery in question by way of adverse possession and sought further relief against the Archaeological Survey of India that they have no right, title and interest in the property in dispute in any manner whatsoever and also sought the relief of permanent injunction restraining the Archaeological Survey of India from dispossessing them and pleaded the _following broad points as under:-

- i) The cemetery in dispute is known as Armenian Cemetery and the same was under the management and control of Armenian Association, Calcutta;
- ii) That the plaintiff (Luice M. Jacob), his family members and relations are in possession of the property known as Armenian Cemetery since September' 1947;
- iii) After seeking permission by the plaintiffs grand-father namely Mr. John Jacob from one Mr. Aloor, manager of the Armenian Cemetery allowed the plaintiff's grand-father namely Mr. John Jacob to use and occupy the cemetery for the residence of his family members and relations in the month of September' 1947;
- iv) That by the lapse of time the number of family members of Mr. John Jacob increased and one Sh. V. Stephen (from Armenian Association Calcutta) visited the cemetery in question in the month of December' 1959 and advised the plaintiff's father Mr. Mathews Jacob and his relations to vacate the portion of the property in question in' their possession. However they refused to shift and refused to vacate the portion in his possession,
- v) Thereafter the Armenian Association through Sh. V. Stephen filed a civil suit no. 139 / 1967 titled as "Armenian Association Vs. Sh M. Jacob & ors." for recovery of possession against the plaintiff's father and his relations.



vi) *The plaintiff's father Sh. Mathews Jacob contested the said civil suit no. 139/1967 titled as "Armenian Association Vs. Mathews Jacob and Anrs." and the said suit was dismissed for on a technical ground i.e. non-compliance with the provisions of the Section 80 of the CPC.*

vii) *On 01.04.2005, some official of the A.S.I visited the property in question and brought some building material for carrying out the repairs and said officials claimed to have been extended threats to dispossess the plaintiff, his family members and relations from the property in dispute.*

16. *Further on perusal of the civil suit no. 139/1967 titled as "Armenian Association Vs. Mathews Jacob and Anrs.", it is observed that the representing persons without any material evidence are claiming it to be a property of Armenian Association. Whereas, Armenian Association in the said suit specifically states in para no. 2 that Armenian Association was only managing the cemetery in question and it belongs to Government. The para no.2 of the said suit is reproduced as under:-*

"2. That the plaintiff is a manager of Chapel and open land surrounding it, which as a whole is. popularly known as Armenian Cemetery, Kishan Ganj, Delhi thé land surrounding . the chapel burial ground. The land under the said cemetery belongs to the government of the Ecclesiastical department. Now the management of it has been transferred to the plaintiff by the government."

17. *The analogous case being the civil suit bearing no. 87/05 titled as "Luice M. Jacob vs. Union of India & Ors." wherein the Same issue was raised in the "said suit as raised by Mr. Vinod Kumar (Authorised Representative) in the present proceedings that the cemetery in question is not a D'Eremao Cemetery and it is an Armenian Cemetery. It is observed that the said issue was dealt with by the court of competent jurisdiction and the civil suit no. 87/2005 was dismissed by the*



court of Ms. Namrita Aggarwal, Ld. CCJ cum ARC-01 (Central), Tis Hazari Courts, Delhi vide Judgment dated 08.05.2014 and First Appeal bearing RCA no. 35/2015 filed by Mr. Luice M. Jacob also stands dismissed on 14.12.2015 by Sh. Gurvinder Pal Singh, Ld. ADJ (Central) Tis Hazari Courts, Delhi. Thereafter, Second Appeal bearing RSA no. 159/2016. (Luice M. Jacob Vs. Union of India &-Anrs.) filed by Mr. Luice M. Jacob before Hon'ble High Court of Delhi was also stands dismissed vide judgment dated 19.07.2016.

18. *It has been clearly observed by the First appellate court of Sh. Gurvinder Pal Singh, Ld. ADJ(Central), Tis Hazari Courts, Delhi by virtue of judgment dated 14.12.2015 passed in RCA No.35/2015 in para no. 15 and 16 that "It is not the case of the appellant/plaintiff that he or his ancestors/predecessor in interest in any way gained possession in part or whole of the suit property as a trespasser. Own admitted case of the appellant/plaintiff is that the land was belonging to the Government and allotted to respondent no.5 by Government, wherein, ancestors of appellant/plaintiff were permitted to move and stay there i.e. as licensee. Evidence on record is 'shorn of any fact proved: on record that unauthorised occupants was ever in hostile possession of the suit property to the owner/Government at any point of time to assert title by adverse possession. The unauthorised occupants failed to provide animus possidendi to discharge his onus on the issue no-1 with respect to entitlement for decree of declaration prayed for.'"*

19. *It has been further clearly observed by the Hon'ble High Court of Delhi in judgment dated 19.07.2016 passed in RSA No.159/016 in para 4 (iii) that "Admittedly, the suit property was allotted by the Union of India to Armenian Association (respondent no.5) and the appellant/plaintiff as only permitted to stay there as a licensee. Appellant/plaintiff therefore had no case of ownership by adverse possession."*

20. *It is clear from the facts of the aforesaid matter and the present proceedings that for same set of unauthorised*



occupants' in D'Eremao Cemetery, a centrally protected monument, two sets of litigation had been initiated by the unauthorised occupants i.e. one through Mr. Luice M. Jacob (who had failed in litigation beginning from Ld. Court of Civil Judge to Hon'ble High Court of Delhi) and other through Mr. Vinod Kumar by way of filing WP(C) no.20917-76/2005 against the show cause notices dated 13.09.2005, followed by eviction and demolition orders dated 17.10.2005 issued by the A.S.I. and further by way of filing LPA No.123/2007 before» Hon' ble High Court of Delhi. The undersigned has no hesitation in holding that this might have been done by the unauthorised occupants of the cemetery in question, so that, if in any set of the litigation (which is altogether for same purposes) they would get the relief, the same. shall be used in other set of litigation to claim parity in said case.

21. In view of the aforesaid discussions (para no.13 to 20), the reply dated 20.09.2005 (Annexure P-9) of Mr. Luice M. Jacob filed on behalf of the unauthorised occupants of the D'Eremao Cemetery, a centrally protected monument is disposed off holding that the property in question is D'Eremao Cemetery which is a centrally:protected monument supplemented by also that the aforesaid suits had also been dismissed by the 3 competent courts in succession including appeals.

22. So far concerning the various replies as reproduced herein above in the preceding paras as discussed above filed by Sh. Vinod Kumar (For himself and as Authorised Representative of the unauthorised occupants) after decision of the LPA No.123/2007, it is observed that same defence has been taken by Mr. Vinod Kumar as analogous to the defence taken by Mr. Luice M. Jacob to the effect that property in question is not D'Eremao Cemetery and it is an Armenian Cemetery owned by the Armenian Association, Calcutta. However, with the lapse of time, Sh. Vinod Kr. (A.R.) suddenly took a u-turn and by virtue of his letter dated 10.07.2015 filed in the office of A.S.J. laid the new claim that the property in question is a private property owned and possessed by



petitioners and is known as Christian Compound since time immemorial and the ASI has no right, title or interest in the said property and further by virtue of his letter dated 20.07.2015 filed the photocopy of purported Jamabandi for the year 1921-22 in Urdu Language without accompanied by its Hindi or English translation copy and photocopy of 2 letters written by Armenian Association to one Sh. Sunny Dixon to make the basis of their ownership over the property in question i.e. D'Eremao Cemetery, a centrally protected monument.

23. *The office letter dated 23.07.2015 by A.S.I. followed by various office reminder letters dated 26.08.2015 and 29.09.2015 (reproduced above) was issued to Sh. Vinod Kumar (A.R.) to submit the English and Hindi Translation of the purported Jamabandi for the year 1921-22 in Urdu Language filed by him over which their ownership claim was laid by the unauthorised occupants over the cemetery in question. But no translated copy was ever filed by Sh. "Vinod Kr. (A.R.) and each and every time, he filed the reply (reproduced above) to the effect that "we are in process of searching a good translator but have not been able to get the same till date. The desired information will be filed as soon as the same is got done by us."*

24. *However, in the interest of justice and fair play, the A.S.I. on its own expenses got translated the photocopy of purported Jamabandi, for the year 1921-22 in the English Language and after going through the English Translation of the purported Jamabandi of year 1921-22, it is observed that said Jamabandi does not pertain to property in question and same pertains to Patti Chandrawal. As per google maps, patti chandrawal is neither near nor adjacent to the property in question and same is shown far away at a distance of 6.7 kms. Accordingly, the said Jamabandi does not support the alleged claim of ownership over the land in question i.e. D'Eremao Cemetery, a centrally protected monument. It is clear after getting the translation done that i.e. why no English or Hindi translated copy of purported Jamabandi was being submitted to this office by the representing persons despite various demands by the*



Archaeological Survey of India because same does not pertain to property in question. Whereas, on the other hand, in the reply/written submission dated 04.01.2012 filed by Sh. Vinod Kumar (A.R.) in the office of A.S.I. has so stated that area occupied by them was previously known as Armenian Cemetery and the said Armenian was previously owned by the Armenian Association a society having its office at Calcutta and according to them (Armenian Association) the said land was transferred to them by the Government. It is needless to mention that this was the continuous stand of you all the unauthorised occupants in D'Eremao Cemetery including Sh. Luice M. Jacob before all courts i.e. in lower court, session court and as well as Hon'ble High Court that property in question illegally occupied by you was owned by Armenian Association. Hence, the purported Jamabandi of year 1921- 22 which even does not pertain to land in question, is rejected as being relevant for the purpose of the present proceedings.

25. The stand/defence of the unauthorised occupants with respect to ownership of the property in question is inconsistent inasmuch as (1) in the writ petitions filed by you in the year 2005 it was stated that cemetery in question was declared protected monument in the Act of 1904 and not protected under . the AMASR Act, 1958 ; (2) Cemetery in question was occupied by the ancestor of Luice M. Jacob as a licensee i in the Sep.' 1947 by the permission of one Mr. Alool, manager of Armenian Association and Armenian Association Calcutta as the owner of this cemetery and not the government ; and (3) by virtue of representation dated 10.07.2015 filed in the office of A.S.I., new claim of your ,ownership since year 1921-22 over the cemetery in question is lodged by you on the basis of purported Jamabandi for year 1921-22 which even does not pertains to cemetery in question. All this is being done just to defeat the right, title and interest of the Government and to usurp the property of the government by hook or crook.

26. It is important to note that claim over the D'Eremao Cemetery, a centrally protected monument to the effect that the same is private property owned by the representing



unauthorised occupants is belied by your own case filed by you before Hon'ble High Court of Delhi by way of WP(C) no.20917- 76/2015 titled as "Roseline Wilson & Ors. Vs. Union of India & Ors." wherein you have clearly and specifically so stated in very clear words and plain language as reproduced hereunder :-

"22. That the petitioners have come to know that the Kishan Ganj Christian Compound has been declared a protected monument under the Ancient Monuments Preservation Act, 1904. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 has no application to the Kishan Ganj Christian Church Compound, Delhi, as it neither falls under the definition of ancient monument or archaeological site and remains as given under section 3 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, nor a notification for its inclusion has been issued by the Central Government under section 4 of the said Act. ...

26. That though the Kishanganj Christian Church Compound, Delhi, was ostensibly declared a protected monument under the Ancient Monuments Act, 1904, the same has been abandoned by the respondent nos. 1, 2 and 3, which is very much apparent from the fact that the since 1947 till April 2005 no claim has been staked by the government in the same, nor anything done by it for its maintenance and renovation. The area around the Christian Church Compound has witnessed mushrooming construction and vast inhabitation mostly at the behest of the Government. Thus the respondents are deemed to have abandoned, relinquished and foregone their claim over the Christian Compound."



Perusal of the aforementioned contentions show that it was an admitted case of the unauthorised occupants before Hon'ble High Court of Delhi in writ petitions that D'Eremao Cemetery (which the unauthorised occupants call it as Kishan Ganj Christian Compound) was declared as a protected monument — under the Ancient Monuments Preservation Act, 1904, but, The Ancient Monuments and Archaeological Sites and Remains Act, 1958 has no application over it. Whereas, the fact remains that Vide notification No.7331 dated 13.12.1922 and published in the Gazette of India on 23.12.1922, the D'Eremao Cemetery was declared to be a protected monument under the provisions of the Ancient Monuments Act, 1904 (herein after referred to as the 1904-Act). In 1951, the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (herein after referred to as the 1951 Act)' was enacted. By virtue of the said Act, certain specified monuments in Part A States and Part B states, as described in the Schedules to the said Act, were declared to be monuments of National importance, and deemed to be protected under the 1904 Act. With the coming into force of the States Reorganisation Act, 1956, a provision was made for the continued protection of those monuments that had been declared to be protected under the provisions of the 1904 Act in Part C states. With the coming in force of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as AMASR Act), by virtue of Section 3, monuments that had been declared to be of national importance under section 126 of the State reorganization Act, 1956 were “deemed to ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purpose of this Act.” In this . manner, the D'Eremao Cemetery became a monument of national importance protected by the provisions of AMASR Act, and to which the provisions of AMASR Act apply with full force. Since D'Eremao Cemetery is a protected monument and therefore, any kind of encroachments within the cemetery are illegal and without any authority of law.



27. So far as the objection that document of any acquisition proceedings of the property in question and paying acquisition money to the land owner or that no documents regarding transfer alienation of this property, in favour of ASI, is concerned, it is observed that your claim of ownership by adverse possession has already been turned down and rejected by the court of competent jurisdiction including appeal before Hon'ble High Court of Delhi and simultaneously held in view of the documents i.e. Jamanbandi for the year 1976-77, 1977-78, 1978-79, 1988-89, 1989-90 filed in the analogous proceedings by Mr. Luice M. Jacob that in the respective columns the name of the owner is that of the Government.

28. So far installation of water or sewer or electricity connection or making of public toilets, Voter-ID card, Election Card, Ration Card etc. and allegedly mentioning thereon in the column of address as 'Christian Compound, Kishan Ganj, Delhi and non mentioning of D'Eremao Cemetery, Kishan Ganj, Delhi in no way constitutes your right and title over the land in question and/or wipes away the identity and character of D'Eremao Cemetery, as a centrally protected monument. oo |

29. So far filing of the copy of site plan/map of year 1929-1930 by Mr. Vinod Kumar (A.R.) by virtue of his reply/written submissions dated 04.01.2012 and letter dated 02.09.2016 in order to dispute the surroundings/bounded location as mentioned in the notification dated 13.12.1922 by virtue of which D'Eremao Cemetery was declared as of national importance is meritless. In the said site plans, there does not find mentioned any names of the sites/location, so that, it could believe that there is no L. Manohar Lal's Godown or the Government Garden near to the property in question. Hence, no benefit can be claimed in the absence of name of the location.

30. So far objection regarding Kishan Ganj Railway Station is concerned, it ' incorrect that it is not near to the cemetery in question. The local inspection revealed that it is very near to the cemetery Le. D'Eremao Cemetery and matches with the



description of locality given in the notification no.7331 dated 13.12.1922 and published in the Gazette of India on 23.12.1922 by which the D'Eremao Cemetery was declared to be a protected monument and government garden (railway garden) also exists in the vicinity which is find mention in the notification dated 13.12.1922. L. Manohar lal Godown is now called and known by the name of Nai-Basti kishan Ganj which is also situated near our D'Eremao Cemetery, therefore all boundariés are fully matches and there is no discrepancy as alleged.

31. As regards objections of the unauthorised occupants that no such place or boundaries ever existed/ exist on / near the property in question as shown in our notification no. 7331 of 13.12.1922 in any records of Revenue Department is meritless and rejected in view of the conclusion arrived at in preceding paras, because, no such record contrary to the same was ever filed by you on record to substantiate the same.

32. No single document or evidence has been filed on record which could "suggest beyond any reasonable doubt in favour of you the unauthorised occupants that cemetery in question is a private property owned by you the unauthorised occupants. Furthermore, no evidence or any single document has been filed by or on behalf of the unauthorized occupants regarding status of fegality of their occupation in the portion of D'Eremao Cemetery, 4 centrally protected monument situated at Kishan Ganj, Delhi.

33. Insofar as the identification of D'Eremao Cemetery is concemed, it is needless to mention that documents in this regard alongwith site plan was filed in the court and supplied you in your Writ Petitions before Hon'ble High Court of Delhi. Reference can be had from those documents.

34. It is also observed that Despite status quo order of Hon'ble High Court of Delhi passed in LPA No.123/2007, you the addressee nos. 18, 19(through son- Mohd. Tahib), 25(through son-Raju Plumber), 43 & 52 did not refrain



yourself carrying out unauthorised construction in the D'Eremao Cemetery, a centrally protected monument site, following which, show cause notices were issued to you the addressee nos. 18, 19(through son-Mohd. Tahib), 25(through son-Raju 'Plumber), 43 & 52 whose details are as follows

<i>Date of the Show Cause Notice</i>	<i>Name of the encroachers</i>
<i>1. 07.05.2015</i>	<i>Tushar Massey</i>
<i>2. 29.06.2015</i>	<i>John Gopal Rana</i>
<i>3. 05.10.2015</i>	<i>Mohd. Tahib</i>
<i>4. 26.10.2015</i>	<i>Kallu Singh</i>
<i>5. 10.11.2015</i>	<i>Raju Plumber</i>
<i>6. 10.02.2016</i>	<i>Sushila Devi</i>
<i>7. 07.06.2016</i>	<i>Tushar Massey (Again)</i>

The replies to the show cause notices were received wherein you denied carrying out the construction work. The replies found to be false in view of the photographs and complaints received from the monument attendant. No permission or authority shown. or. filed by you having been obtained before raising the illegal construction.

35. It is the primary duty of the A.S.I. to ensure that the monuments of national importance are preserved and protected and that no person has the right to desecrate and deface these monuments of national importance.

36. Since you failed to show or produce any right, title or interest on your part for your unauthorised occupation of the premises in question which is a- part of D'Eremao Cemetery, centrally protected monument of Archaeological Survey of



India and your status is therefore that of a mere encroacher. As such, you cannot be allowed to occupy on the part of the protected monument/area and all of your contentions raised by you in your replies are therefore, without any merit, and accordingly rejected.

37. So far question of illegal and unlawful construction raised by you on the part of centrally protected monument is concerned, you have failed to show any permission or any authority taken by you before raising illegal construction by you on a part of D'Eremao Cemetery, centrally protected monument. Therefore, you are hereby directed to remove 'your belongings including men and material from the part of the D'Eremao Cemetery, declared as a protected monument, unauthorizedly under your occupation and demolish the structure which-you have raised unauthorizedly and remove the malba/material.

38. In compliance of this order, you are required to immediately act — accordingly pursuant to this order within 7 days and to quit and vacate the occupied portions of the premises of the said cemetery, after this order is delivered/pasted in the premises of the said centrally protected monument, failing which, action shall be taken for the removal of your illegal occupation and demolition at your risk and expense.”

46. Another important aspect of the case is that one of the residents of the area preferred a Civil Suit being Suit No.87/2005 for declaration of title and for grant of permanent injunction for protection against forceful dispossession, wherein ASI was impleaded as one of the respondents. Evidence was recorded in the Civil Suit, and after hearing the parties at length, the Civil Suit was dismissed by the learned Civil Judge, Delhi vide judgment and decree dated 08.05.2014.



47. An appeal was preferred against the judgment dated 08.05.2014 being RCA No.35/2015 and the same was dismissed by the learned Additional District Judge, Delhi vide judgment dated 14.12.2015. Against the judgment dated 14.12.2015, a second appeal being RSA No.159/2016 was preferred before this Court which was also dismissed. Meaning thereby, more than a decade long civil litigation also took place in respect of the same property resulting in dismissal of the Civil Suit, the first appeal and the second appeal.

48. The order passed by the Director General, ASI reveals that the appellants/ petitioners are unauthorized occupants of the land which forms part of the *D' Eremao Cemetery, Kishan Ganj* – a centrally protected monument declared as monument of national importance vide Notification No.7331 dated 13.12.1922 and published in the Gazette of India on 23.12.1922.

49. The appellants before this Court – by filing various documents like Aadhaar Card, Ration Card, Electricity Bill, Driving License, Tax Receipts, were claiming to be owners of the subject property and the Revenue entries (*Jamabandi*) were also brought to the notice of the ASI. Pertinently, at no point of time, Title Deeds, any Transfer Deeds transferring title, right or interest in favour of the appellants, was brought to the notice of the ASI, or to the notice of Civil Court, or this Court by the writ petitioners/ appellants.

50. The appellants/ writ petitioners in the writ petition are making an attempt to claim title by virtue of adverse possession, and therefore, the Director General, ASI – as it was a case of protected monument, has rightly



passed an order after hearing the parties at length in respect of eviction of the appellants.

51. It is unfortunate that in respect of a protected monument, all kinds of proceedings have taken place right from the Civil Suit to Second Appeal before this Court, Writ Petitions, LPAs, and since 2005, the ASI has not been able to evict the unauthorized occupants, nor been able to demolish the unauthorized structures, which are certainly in existence over the land which forms part of the *D' Eremao Cemetery*.

52. Another important aspect of the case is that the Armenian Association – as the *D' Eremao Cemetery* is known as Armenian Cemetery, also instituted a Civil Suit being Civil Suit No.139/1967 titled as '*Armenian Association Vs. Mathews Jacob & Ors.*', wherein the Armenian Association categorically stated in paragraph 2 of the plaint that the Armenian Association was the Manager of Chapel and open land surrounding it, which as a whole is popularly known as Armenian Cemetery, Kishan Ganj, Delhi surrounding the Chapel burial ground. Meaning thereby, it is confirmed that at no point of time, in respect of the civil proceedings, any Title Deed was brought to the notice of the Civil Court, or the High Court, nor any document transferring the title, was brought before the Court by the appellants, or by any other person in the matter.

53. The plea of adverse possession was turned down in Civil Suit No.87/2005 as well as by the High Court. In fact, this Court – while deciding RSA No.159/2016 vide judgment dated 19.07.2016, arrived at a conclusion that the suit property was allotted by the Union of India to the



Armenian Association and the appellants/ plaintiffs therein were permitted to stay there only as a licensee. It was also held that the appellants/ plaintiffs therein have no claim for ownership by taking a plea of adverse possession.

54. The facts of the case, thus, make it very clear that the appellants were never able to establish their title before the Civil Court, or before the High Court in the earlier rounds of litigation and the matter was remanded back to the ASI, only to ensure that opportunity of personal hearing is granted to all the occupants and principles of natural justice and fairplay are followed.

55. It is an undisputed fact that the *D' Eremao Cemetery* (which the unauthorized occupants call as Kishan Ganj, Delhi) was declared as protected monument under the Ancient Monuments Preservation Act, 1904 (Act of 1904). Vide Notification No.7331 dated 13.12.1922, published in the Gazette of India on 23.12.1922, the *D' Eremao Cemetery* was declared as a protected monument under the Act of 1904.

56. By virtue of the enactment of the Ancient and Historical Monuments and Archeological Sites and Remains (Declaration of National Importance) Act, 1951, certain specified monuments mentioned in Part-A States and Part-B States – as described in the Schedules to the Act, were declared to be monuments of national importance and deemed to be protected under the Act of 1904.

57. The facts further reveal that with coming into force of the States Reorganisation Act, 1956, a provision was made for the continued protection of those monuments that had been declared to be protected under



the provisions of the Act of 1904 in Part-C States. With coming into force of the AMASR Act, 1958, by virtue of Section 3 thereof, monuments that had been declared to be of national importance under Section 126 of the States Reorganisation Act, 1956 were deemed to be ancient and historical monuments, or archeological sites and remains declared to be of national importance for the purposes of the AMASR Act, 1958. The *D' Eremao Cemetery*, thus, became a monument of national importance protected by the provisions of the AMASR Act, 1958, and the provisions thereof apply with full force.

58. The aforesaid order passed by the Director General, ASI makes it very clear that *D' Eremao Cemetery* is a protected monument, and therefore, the Central Government being its rightful owner has complete dominion over it and it is certainly competent to free it from encroachments by following due process of law.

59. The facts of the case read with the order passed by the Director General, ASI further reveal that the documents filed by *Luice M. Jacob* included Jamabandi for the years 1976-77, 1977-78, 1978-79, 1988-89, 1989-1990 and under the ownership column the name of owner is correctly reflected as '*Government of India*', and therefore, the Revenue record also establishes that it is the Government of India which is the owner/ titleholder of the property in question.

60. It is true that the appellants have filed Voter ID Cards, Aadhaar Cards, Ration Cards, Water/ Sewer/ Electricity connection papers, however, the said documents cannot decide the title of the property.



61. Not only this, in the considered opinion of this Court, the title dispute cannot be adjudicated nor decided in exercise of writ jurisdiction and merely because it has been alleged that the appellants are in possession of the property which is part of the *D' Eremao Cemetery*, they cannot be declared as titleholder on account of adverse possession.

62. The Hon'ble Supreme Court in the case of ***Dwarka Prasad Agarwal Vs. B.D. Agarwal***, (2003) 6 SCC 230, in Paragraph 28 has held as under:

“28. A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contradistinguished from a dispute involving public law character. It is also well settled that a writ remedy is not available for resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s Writers & Publishers Pvt. Ltd. as also whether a partition or a family settlement was arrived at or not, were pending adjudication before the civil courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved around the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.”

(Emphasis supplied)

63. In light of the aforesaid, as the appellants are claiming title of a property, a writ remedy is not available to them for resolving the title dispute. It is pertinent to note that the issue qua the title of the writ



Petitioner in W.P.(C.) No. 8203/2018 *Luice M. Jacob* already stands settled by the Courts in the civil suit; first appeal and second appeal against him.

64. The Hon'ble Supreme Court in the case of ***State of Rajasthan Vs. Bhawani Singh***, 1993 Supp (1) SCC 306, in Paragraph No. 7 has held as under:

“7. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.”

(Emphasis supplied)

65. The Hon'ble Supreme Court in the aforesaid case has held that disputed question relating to title cannot be satisfactorily gone into or adjudicated in a Writ Petition.

66. In ***Shubhas Jain Vs. Rajeshwari Shivam & Ors***, 2021 SCC OnLine SC 562, the Hon'ble Supreme Court has held as under:

“26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable”

(Emphasis supplied)



67. The Hon'ble Supreme Court in the aforesaid case has held that in case of disputed questions of facts, the remedy under Article 226 of the Constitution of India is not the proper remedy.

68. In ***Himmat Singh Vs. State of Haryana***, (2006) 9 SCC 256, the Hon'ble Supreme Court has taken a similar view and has held as under:

*“18. The said contention again has no force. Such a contention has been raised only in “the grounds” and the contents thereof have not been verified. In the grounds of a writ petition only a question of law can be raised and not a statement of fact. No statement has been made in the body of the writ petition. The statement made in the said grounds was also not verified in accordance with the writ rules. Despite the same, as we have noticed hereinbefore, the fifth respondent in his affidavit denied or disputed the contents thereof. Whether the statement of the appellant or the fifth respondent was correct or not could not ordinarily be decided in a writ proceeding. **It is well known that in a writ petition ordinarily such a disputed question of fact should not be entertained.** The High Court arrived at a finding of fact on the basis of affidavit evidence.”*

(Emphasis supplied)

69. In ***M/s Magadh Sugar & Energy Ltd. Vs. The State of Bihar & Ors.***, Civil Appeal No. 5728 of 2021 decided on 24.09.2021, the Hon'ble Supreme Court has held as under:

“19. Recently, in Radha Krishan Industries v. State of Himachal Pradesh & Ors²¹ a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:



“28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or

(d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory



remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

(Emphasis supplied)”

70. In light of the aforesaid judgments, the disputed question of title qua the remaining unauthorized occupants barring *Luice M. Jacob* cannot be adjudicated in a writ petition and the only remedy available to the appellants was to file a Civil Suit.

71. In the considered opinion of this Court, by taking a plea of adverse possession, the appellants cannot claim title in respect of a land which is part of a protected monument of national importance and, therefore, this Court does not find any reason to interfere with the order passed by the Director General, ASI dated 10.01.2017 or with the judgment passed by the learned Single Judge. The writ appeal is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SAURABH BANERJEE)
JUDGE

AUGUST 17, 2023

LPA 580/2023

Page 48 of 48

Signature Not Verified

Digitally Signed
By: BHUPINDER SINGH
ROHELLA
Signing Date: 18.08.2023
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