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

+ **Date of Decision: 22.08.2023**

% **LPA 598/2023 & CM APPLs. 43134-43135/2023**

MR LUICE M JACOB Appellant

Through: Mr. S.S. Jain and Mr. R.K. Sharma,
Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Ajay Digpaul, CGSC with
Mr.Kamal R. Digpaul and Ms. Swati
Kwatra, Advocates for respondents
No.1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

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 to the writ petitioners by Archaeological Survey of India (ASI).

LPA 598/2023

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2. The writ petitioners in W.P.(C.) No. 2725/2018 titled *Mrs. Roseline Wilson and Ors. Vs. Archaeological Survey of India and Ors.* have preferred LPA 580/2023 and this Court vide judgment dated 17.08.2023 has dismissed the said LPA preferred in the matter. Now, a second LPA has been preferred in the matter by *Mr. Luice M. Jacob* writ petitioner in W.P.(C.) No. 8203/2018.

3. The undisputed facts of the case reveal that a writ petition being W.P.(C.) No. 8203/2018 was preferred by *Luice M. Jacob* stating that his grandfather was placed in possession of a portion of a land at Christian Compound, Kishan Ganj, Delhi (hereinafter referred to as 'said property') by *Mr. Alool*, Manager of Christian Compound in September 1947 and the writ petitioner is in peaceful and uninterrupted possession of the said property.

4. The writ petitioner stated before the learned Single Judge that land admeasuring 3 Bighas & 1 Biswa comprised in Khasra No.465, Khewat No.237 was allotted by the British Government to the Armenian Society for the purpose of establishing a graveyard in respect of Russian Christians. The Armenian Society constructed a Chapel and the surrounding land was left open for the purpose of graves. The property was known as Armenian Cemetery. It was under the management and control of Armenian Association, 20 Park Mansions, Park Street, Calcutta.

5. In the writ petition, it was further stated that the writ petitioner's grandfather was allotted a land by the Armenian Society in the year 1947. On 26.11.1956, Mr. John Jacob, the grandfather of the petitioner expired. In



those circumstances, the writ petitioner/ appellant being the legal heir of Mr. John Jacob continued in possession of the property. The writ petitioner/ appellant has further stated that by virtue of adverse possession, the writ petitioner/ appellant became the titleholder of the property, and by no stretch of imagination, the order could have been passed by the Director General, ASI dated 01.05.2018 directing eviction of the writ petitioner.

6. The matter was heard at length by the learned Single Judge and the learned Single Judge vide judgment dated 11.07.2023 has dismissed the writ petition. The learned Single Judge in paragraphs 37 to 44 of the said judgment has held as under:

“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.”

7. As it was a common judgment in W.P.(C.) Nos. 2725/2018 & 8203/2018, this Court has passed a detailed and exhaustive order dismissing LPA No.580/2023 preferred by *Mrs. Roseline Wilson and Others*, and observed in paragraphs 50 to 71 as under:

“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.”

8. Learned counsel for the appellant/ writ petitioner has vehemently argued before this Court that the Director General, ASI has passed the order dated 01.05.2018 impugned in the underlying writ petition, without issuing any show-cause notice and without hearing the appellant/ writ petitioner at any point of time.

9. The order passed by the Director General, ASI reveals that earlier also *Mr. Luice M. Jacob* has preferred a writ petition being W.P.(C.) No. 11145/2016 titled *Luice M. Jacob Vs. Union of India & Ors* before this Court and the same was disposed of by an order dated 22.11.2017 with a direction to the respondent therein to hear the writ petitioner therein (appellant herein) and to pass an order in accordance with law. In pursuance of the order dated 22.11.2017, an opportunity of hearing was granted to the appellant on 29.12.2017; oral submissions as well as written-submissions were made by the writ petitioner/ appellant; and thereafter the Director General, ASI has finally passed an order dated 01.05.2018. The same is reproduced as under:

“ The D’ Eremao Cemetery located at Kishan Ganj, Delhi, which is 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.

After inspection by the officials of Delhi Circle, ASI at the D’ Eremao Cemetery you immediately filed a civil suit in the year 2005 before the Tis Hazari Court, Delhi bearing No.87/2005 “Luice M Jacob Versus Union of India & others” for seeking relief of declaring you as owner of the aforesaid



cemetery by way of adverse possession etc. This civil suit was renumbered as No.273/2009 “Luice M. Jacob Versus Union of India & others” which was disposed of by the Hon'ble Court vide its judgment and order dated 8.5.2014 with directions to the Archaeological Survey of India to reconsider whether the suit premises is a protected monument or not.

Further, you had filed an Appeal bearing No.35/2015 before the Tis Hazari Court, Delhi which was also dismissed on 14.12.2015 against you with the observation that the Plaintiff cannot be permitted to use the place of adverse possession to obtain the decree of declaration in the fact of the matter.

Thereafter, you had filed another petition in the Hon'ble Delhi High Court RSA NO.159/2016) to seek direction from the Hon'ble Court regarding ownership rights of the D' Eremao Cemetery. The Hon'ble court vide his order dated 19.07.2016 dismissed your appeal.

On 20.9.2016 vacation order was issue to you to remove your unauthorized occupation from D' Eremao Cemetery, a centrally protected monument against which you had initiated legal proceedings titled as “Luice M Jacob Vs. Union of India & Others” before the Hon'ble High Court of Delhi (W.P.(C) NO.11145/2016 & C.M. No.43571/2016) in order to avoid eviction of your illegal occupation.

The said petition has also been disposed of by the Hon'ble Court vide its order dated 22.11.2017 with a directions that the Petitioner may be heard and order may be passed by the same officer who exercises the power of the Central Government.

In pursuance to the order dated 22.11.2017 hearing was given to you on 29.12.2017 wherein you made oral and written submissions.

In the written submission you have argued that the land i.e. D' Eremao Cemetery of Kishan Ganj, Delhi is a private land owned and possessed by Christian Community. Your



argument found without base, wrong and therefore denied. The land in your possession is a part of centrally protected monument/area of D' Eremao Cemetery and furthermore, no single document has been produced or submission by you to substantiate your claim. Not only this, there are judicial findings against you that ownership/ title of the suit property is with Government of India which has already attained finality.

Further, the stand taken by you in your reply that the Christian family members, relation are in possession of the cemetery and they have been enjoying the same without any interference or obstruction is incorrect and denied. Officials of Delhi Circle, ASI inspected the D' Eremao Cemetery and show cause notices were issued on 13.09.2005 to all defaulters for eviction of encroachment, men and material.

Regarding your objection that the afore-noted cemetery is not an D' Eremao Cemetery and it is an Armenian Cemetery, it is stated here that the similar objection was also raised by you in your civil suit (CS/87/2005) in First Appeal (RCA NO.35/2015) and Second Appeal bearing RSA 159/2016 your argument in these cases have already been dealt in detail by the Hon'ble Competent Courts, and it was categorically held by the Hon'ble Courts that the land records clearly mentioned the owner as "sarkar daulatmadar" i.e. the Government and further holds that the suit property was allotted by the Union of India to Armenian Association. Therefore, your objection to the effect that the land in illegal occupation is not a part of D' Eremao Cemetery is meritless and rejected.

In your written submission it is mentioned that your families living in the house constructed over this property with water and electricity connections and having Voter I.D. Cards, Ration Cards, Adhar Cards and Birth Certificates etc. mentioning there on Christian Compound, Kishan Ganj, Delhi as addressed. The electricity connection, Voter-ID Card, Election Card, Ration Card, etc. in no way construed your right and title over the land in question and justify the illegal construction.



The D'Eremao Cemetery has been declared as a protected monument under provisions of the Ancient Monuments Preservation Act, 1904. In 1951, the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 was enacted. By virtue of the Act of 1951 all the monuments/sites declared protected by the Act of 1951 and deemed to be declared protected under the Act of 1951.

With the coming in force of the Ancient Monuments and Archaeological Sites Land Remains Act, 1958, by virtue of Section 3, all monuments that had been declared protected under the Act of 1951, brought under the preview of Act of 1958 and deemed to be of national importance under the Act of 1958.

In this manner, the D'Eremao Cemetery became a monument of national importance under the Act of 1958, and therefore all provisions of Act of 1958 shall apply on the said monument with full force. As per the Act of 1958, any kind of construction within the premises of centrally protected monument taken up without the permission of the Central Government is illegal and without any authority of law.

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

Since you failed to show or produce any right, title or interest on your part for your unauthorized occupation of the premises in question which is a part of D' Eremao Cemetery, a centrally protected monument, your status, is therefore that of a mere encroacher. As such, you cannot be allowed to occupy on the part of the protected monument and its premises and all contentions raised by you in your replies are therefore, without any merit and accordingly rejected.

Therefore, you are hereby directed to remove your belongings including men and material from the part of the D' Eremao Cemetery, a centrally protected monument,



unauthorizedly under your occupation and demolish the constructions which you have raised unauthorizedly and remove the malba/material.

You are directed to immediately act accordingly pursuant to this order within three weeks and to quit and vacate the occupied portions of the premises of the said monument.

Sd/-

Director General

Archaeological Survey of India

1/5/18”

10. In the considered opinion of this Court, the order dated 01.05.2018 passed by the Director General, ASI does not warrant any interference. The appellant before this Court has preferred a Civil Suit before Tis Hazari Courts, Delhi being Suit No.87/2005 (renumbered as Suit No.273/2009) which was dismissed vide judgment dated 08.05.2014. The appellant herein preferred a first appeal being RCA No.35/2015 which was dismissed on 14.12.2015. The appellant herein challenged the same by way of second appeal being RSA No.159/2016 which was dismissed by this Court vide order dated 19.07.2016. The appellant herein was claiming title of the said property on the ground of adverse possession in the aforesaid proceedings, however, failed to establish his title.

11. In the considered opinion of this Court, the appellant has not been able to establish his title in the Civil Suit and the subsequent appeals and the learned Single Judge has rightly declined to interfere in the disputed question of title qua *Luice M. Jacob* in a writ petition in light of the remedy of filing of Civil Suit already having been availed by *Luice M. Jacob*.



12. This Court also does not find any reason to interfere with the order passed by the learned Single Judge to the extent the present appellant *Luice M. Jacob* is concerned. The principles of natural justice have been followed; *Luice M. Jacob* was granted an opportunity of hearing; written-submissions were also considered by the Director General, ASI before passing the order dated 01.05.2018; and by taking plea of adverse possession, the appellant 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 01.05.2018, or with the judgment dated 11.07.2023 passed by the learned Single Judge.

13. The present Letters Patent Appeal is, accordingly, dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

AUGUST 22, 2023/B.S. Rohella