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

(7) W.P.(C) 1936/2024 & CM APPL. 8125/2024

VEENA KOHLI

..... Petitioner

Through: Ms. Tejasswini, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Garima Sachdeva, Senior Panel Counsel with Mr. Tarveen Singh Nanda, Govt. Pleader and Ms. Divyanshi Maurya, Advocate.
Dr. Pradeep Kumar Pandey, ASI and Mr. Ashish Vashisht, Surveyor, ASI

(26) W.P.(C) 14276/2023 & CM APPLs. 56564/2023, 66457/2023 & 2267/2024

VEENA KOHLI

..... Petitioner

Through: Ms. Tejasswini, Advocate.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Garima Sachdeva, Senior Panel Counsel with Mr. Tarveen Singh Nanda, Govt. Pleader and Ms. Divyanshi Maurya, Advocate.
Dr. Pradeep Kumar Pandey, ASI and Mr. Ashish Vashisht, Surveyor, ASI.

(30) W.P.(C) 1410/2024 & CM APPL. 5816/2024

VEENA KOHLI

..... Petitioner

Through: Ms. Tejasswini, Advocate.

W.P.(C) 1936/2024 etc.

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versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Garima Sachdeva, Snior Panel Counsel with Mr. Tarveen Singh Nanda, Govt. Pleader and Ms. Divyanshi Maurya, Advocate.
Dr. Pradeep Kumar Pandey, ASI and Mr. Ashish Vashisht, Surveyor, ASI.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER
26.04.2024

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1. This Order shall dispose of all the present three writ petitions being W.P.(C) 1936/2024, W.P.(C) 14276/2023 and W.P.(C) 1410/2024.
2. The facts, in brief, of all the three writ petitions are that the Petitioner herein is the owner of a commercial premises being Shop No.11, Regal Building, Ground Floor, Parliament Street, New Delhi (*hereinafter referred to as "Subject Property"*). Since the subject property is situated within 5 kms of the regulated area of Jantar Mantar, it is governed by the Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and Other Functions of the Competent Authority) Rules, 2011 (*hereinafter referred to as "2011 Rules"*) Under the said Rules any person occupying any building within the stipulated distance of any Archaeological Monument has to take permission before carrying out any construction/repairs/renovation from Respondent No.2/ Archaeological Survey of India.
3. Rule 6 of the 2011 Rules lays down the processing of applications under various categories. Rule 6(VII) deals with repair or renovation of any



building or structure located in the land owned by the applicant in the regulated area. The applications made under Rule 6(VII) are dealt with under Rule 8. Rule 8(2) provides that when an application is received under category VII of Rule 6 for the renovation and repair of building or structure located in the regulated area, the same is processed and permission is granted by the Competent Authority under intimation to the Authority.

4. The Petitioner moved an application under Rule 8(2) of 2011 Rules for repair/renovation of the subject property for which permission was granted to the Petitioner on 26.07.2018. A perusal of the permission granted to the Petitioner discloses that the said permission was valid only for a period of three years. It is stated that the work could not be carried out owing to the outbreak of COVID-19 pandemic and the said permission expired on 25.07.2021. Material on record discloses that the Petitioner, thereafter, moved an application on 01.09.2023 for renewal of the said permission and since no action was taken on the application of the Petitioner, a writ petition being W.P.(C) 14276/2023 was filed by the Petitioners with the following prayers:

“(a) issue appropriate writ / order / directions to Respondent No.2 Archaeological Survey of India to issue permission-NOC consent letter under Rule 8 (2) of Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Byelaws and Other Functions of the Competent Authority) Rules, 2011 in response to the Petitioner's Application dated 01.09.2023 (resubmitted on 13.09.2023) seeking permission for carrying out the repairs, renovation, interior works at premises No.11, Regal Building, Ground Floor, Parliament Street, New Delhi-110001 in view of earlier permission vide F.No.12/445/2018-CA/Delhi/UID: 1853/1355 dated 26.07.2018 or in alternative, to revalidate the permission granted vide



F.No.12/445/2018-CA/Delhi/UID: 1853/1355 dated 26.07.2018 under Rule 17 (2) of Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Byelaws and Other Functions of the Competent Authority) Rules, 2011;

(b) pass any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

5. This Court *vide* Order dated 02.11.2023 issued notice in the W.P.(C) 14276/2023 and passed the following Order:

“1. The Petitioner has approached this Court for a direction to Respondent No.2/Archaeological Survey of India for issuance of permission/NOC to the Petitioner under Rule 8(2) of the Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and Other Functions of the Competent Authority) Rules, 2011 for carrying out repairs and renovation in respect of the premises bearing No.11, Regal Building, Ground Floor, Parliament Street, New Delhi-110001.

2. It is stated by the learned Counsel for the Petitioner the permission for the same effect was earlier granted to the Petitioner on 26.07.2018, however, the construction activities, including repairs and renovation could not be carried out owing to the outbreak of COVID-19 pandemic. It is stated that the validity period of the said permission has expired and the Respondent No.2/ASI has refused to re-validate the permission. It is stated that the Petitioner has submitted a fresh application for the very same permission/NOC, however, there is no response from the Respondent No.2/ASI. It is also stated that under Rule 17(2) of the Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and Other Functions of the



Competent Authority) Rules, 2011, there is a provision for re-validating the permission already granted and a fresh permission is not required.

3. Issue notice.

4. Learned Counsel for Respondent No.1 accepts notice.

5. On payment of process fee, let notice be issued to Respondent No.2 through all permissible modes, including Dasti.

6. List on 25.01.2024.”

6. Material on record discloses that the Petitioner had made a submission before this Court that an application had been filed under Rule 17(2) of the 2011 Rules. At this juncture, it is apposite to reproduce Rule 17(1) and (2) of the 2011 Rules which reads as under:

“17. Validity and Revalidation of permission.-(1)
Permission granted by the competent authority after the approval of the Authority for construction, reconstruction, repair and renovation of building or structure as the case may be, in the prohibited area or regulated area of protected monument or protected area, which is of residential, public utility, public projects and industrial in nature, shall be valid for a period of three years from the date of grant of permission.

(2) If the applicant for any reason fails to carry out repair, renovation, construction or reconstruction during the period specified in the permission, lie may approach the competent authority for revalidation of the same, which may be granted for any period not exceeding two years by the competent authority.”



7. It is seems that the Petitioner was ill-advised to move an application under Rule 17(2) because Rule 17 does not apply to commercial premises but it applies only on residential, public utility, public projects and industrial premises. Thus, the said application was not maintainable in law. Material on record indicates that when the Petitioner moved an application under Rule 17(2), the Petitioner received a Communication dated 15.12.2023 from the Competent Authority which states that the permission granted to the Petitioner on 13.09.2023 stands withdrawn. The said Communication dated 15.12.2023 reads as under:

“Sub: Application for grant of permission for repair/renovation at Property No. 11, Regal Building, Ground floor, Connaught Place, New Delhi -reg

With reference to the subject cited above, it is to inform you that your request vide letter dated 17.11.2023 for withdrawal of the application dated 13.09.2023 for fresh permission has been accepted, therefore the file of grant of permission for repair/renovation at Property No. 11, Regal Ground floor, Connaught Place, New Delhi bearing F. No. 12/874/2023/CA/Dellii/UID:2233 is closed.

Further on your request for extension on the earlier issued permission vide letter F. No. 12/445/2018-CA/Delhi/UID:1853/1355 to 1358 dated 26.07.2018, it is to inform that as per the provision made under the Rule 17 (2) of the Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and Other Functions of the Competent Authority) Rules, 2011, considerable period of extension i.e. 2 years has already expired, therefore request for extension on validity of permission dated 26.07.2018 could not be granted.”

8. Stating that the application under Rule 17(2) was not proper and the



withdrawal of the permission granted to the Petitioner in the year 2018 could not have been permitted, the Petitioner filed another writ petition being W.P.(C) 1410/2024 with the following prayers:

“(a) issue appropriate writ/ order/ directions to quash I set-aside letter/ communication dated 05.01.2024 issued by Respondent No.2/ Archaeological Survey of India regarding "Permission for Repairs/ Renovation at Property No.11, Regal Building, Ground Floor, Parliament Street, New Delhi-110001 in the interest of justice as being in violation of Rule 8 (2) of Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and Other Functions of the Competent Authority) Rules, 2011;

AND

to direct the Respondent No.2 /Archaeological Survey of India to consider and allow the Petitioner's application dated 21.12.2023 in accordance with Ancient Monuments and Archaeological Sites and Remains Act 1958 and Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and Other Functions of the Competent Authority) Rules, 2011;

(b) pass any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

9. During the pendency of the aforesaid two writ petitions, the Petitioner received a Show Cause Notice dated 31.01.2024 from Archaeological Survey of India stating that complaints have been received regarding unauthorized construction on the subject property. The Petitioner, thereafter, filed another writ petition being W.P.(C) 1936/2024 before this Court challenging the Show Cause Notice dated 31.01.2024.



10. The short submission of the learned Counsel appearing for the Petitioner is that the Petitioner was granted permission on 26.07.2018 and the Petitioner approached the authorities for renewal of the said permission since the said permission was only valid for a period of three years. He, therefore, states that the Show Cause Notice could not have been issued at all. He also states that the fact that the Petitioner had filed an application under Rule 17(2) cannot amount to withdrawal of the earlier permission because the application under Rule 17(2) was ill-advised and the same was not applicable.

11. *Per contra*, learned Counsel appearing for the Respondent/ASI, on instructions from Mr. Ashish Vashisht, Surveyor, ASI who is present in Court today, states that an inspection had been conducted on the subject property and during inspection it was found that there were deviations from the sanctioned plan for which permission was granted to the Petitioner in the year 2018 and therefore, a Show Cause Notice has been issued to the Petitioner. Learned Counsel appearing for the Respondent/ASI further states that the permission can be given to the Petitioner provided deviations mentioned in the Show Cause Notice are corrected.

12. The Petitioner had received the permission in the year 2018. However, the Petitioner could not have got the construction/renovation completed due to the outbreak of COVID-19 pandemic, otherwise the Petitioner would not have approached the Respondent/ASI for re-validation of the sanctioned plan already obtained in the year 2018.

13. Without going into the question as to whether there are deviations exist in the subject property from the sanctioned plan or not and in the facts and circumstances of the case without going into the merits of the writ



petition, the Petitioner is permitted to complete the renovation in the subject property in accordance with the permission granted to the Petitioner in the year 2018. After completing the renovation, the Petitioner shall inform the Competent Authority of the Respondent/ASI that the renovation is complete. The Petitioner is directed to complete the renovation within 16 weeks from the receipt of this Order. On the receipt of the communication from the Petitioner that the renovation is complete, the Competent Authority of the Respondent/ASI is permitted to conduct an inspection on the subject property to satisfy that the renovation has been done in accordance with the sanctioned plan granted to the Petitioner in the year 2018. In case, it is found that there are deviations from the sanctioned plan obtained by the Petitioner in the year 2018, the Competent Authority of the Respondent/ASI will be at liberty to proceed with the matter in accordance with law. The Show Cause Notice dated 31.01.2024 and the Communication dated 15.12.2023 are set aside with a liberty to the Respondents to issue a fresh Show Cause Notice to the Petitioner in case on inspection of the Subject Property it is found that there are deviations from the sanctioned plan obtained by the Petitioner in the year 2018

14. With these observations, the writ petitions are disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 26, 2024

S. Zakir