

**2507
2025**

FRIDAY

Court : CB-07
Item : DL-02
Bench : SINGLE
Matter : WPA
Status : DO
ID : 266057
AR : NANDY

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 20344 OF 2021

SGPT ENTERPRISE & ORS.
VS.
UNION OF INDIA & ORS.

**MR. A.C. KAR, SR. ADVOCATE
MR. MANOJ KUMAR ROY, ADVOCATE**

.....for the Petitioners

**MR. N.L. SINGHANIA, ADVOCATE
MR. ARUN BANDOPADHYAY, ADVOCATE**

.....for the Union of India

1. In questioning the justifiability of the notice dated 11.02.2021 issued by the respondent no. 3, the present writ-petition has been preferred. Additionally, the petitioners pray for issuance of a writ of certiorari for quashing of that notice. Furthermore, the petitioners pray for an appropriate order and/or direction and/or writ, particularly, in the nature of prohibition, restraining the respondents from taking any steps for demolition of the petitioners' building, which according to the petitioners, was constructed based on the building plan sanctioned by the competent authority.
2. The petitioner no. 1, being a developer, entered into an agreement with the owner of the land in question and in terms of the agreement, developed the land and constructed a building. Subsequently, the Archaeological Survey of India issued a notice to the petitioners alleging that the area falls within the regulatory area under the Ancient Monuments & Archaeological Sites & Remains Act, 1958 (hereinafter referred to as 'the Act of 1958'). The said notice claimed that the petitioners should have obtained a prior permission from the Archaeological Survey of India before undertaking the construction work.
3. The petitioners assailed the said notice by preferring a writ-petition being WP 24146 (W) of 2019. Record reveals that a Coordinate Bench of this Court by an order dated 02.03.2020 disposed of the said writ-petition

along with an application filed in connection therewith, whereby the notice under challenge in that writ-petition was set aside with liberty granted to the Archaeological Survey of India to issue a fresh notice to the petitioners under the Act of 1958, granting the petitioners and such other interested persons, if any, an opportunity to show cause.

4. Mr. Kar, learned Advocate representing the petitioners submits that in the second round of litigation, the petitioners have challenged the second show-cause notice. He informs the Court that upon receipt of such show-cause notice from the Archaeological Survey of India, the petitioners file their response. However, despite receiving such response from the petitioners, no step has been taken and no opportunity of hearing was given to the petitioners. According to Mr. Kar, such action is a blatant violation of the principles of natural justice.
5. Inviting my attention to the affidavit-in-opposition filed by the Archaeological Survey of India in WP 24146 (W) of 2019, along with the notice dated 11.02.2021, Mr. Kar submits that the Archaeological Survey of India has taken contradictory positions. In the affidavit-in-opposition, it is stated that the petitioners' building is located within 180 metres of the centrally protected monument, namely the "Warren Hastings House." However, in the notice, it is mentioned that the petitioners' building is situated at a distance of 189.52 metres from the said protected monument. Accordingly, Mr. Kar argues that the Archaeological Survey of India is uncertain as to whether the petitioners' building falls within the regulatory area. He further draws my attention to a schedule appended to the Notification dated 23.11.2004 and contends that the schedule identifies only four plots of land as falling within the regulatory area under the Act of 1958.
6. Mr. Singhania, learned Advocate representing the Union

of India, on the other hand, submits that irrespective of the fact whether the petitioners' property falls within 180 metres or 189 metres, the fact remains that the property falls within 200 metres of the protected monument. Therefore, according to Mr. Singhanian, the submission of Mr. Kar is not factually correct that the petitioners' building does not fall within the regulatory area.

7. Mr. Singhanian, submits that if any direction is given to afford an opportunity of hearing to the petitioners, the same shall be done and appropriate follow up action shall be taken thereupon.
8. Having heard the learned Advocates appearing on behalf of the respective parties and upon careful perusal of the materials on record, particularly noting the stand taken by the Union of India, I direct the Archaeological Survey of India to provide the petitioners and any other interested persons an opportunity of hearing before arriving at any final decision regarding whether the petitioners' building falls within the regulatory area. Prior to making such determination, all necessary steps shall be undertaken, and, if required, the relevant gazette notification shall be duly consulted.
9. It is also clarified that before taking the final decision in terms of this order, no coercive step shall be taken against the petitioners' building. The petitioners also shall not take any steps to change the nature and character of the building and shall not make any further construction, until the final decision is taken by the Archaeological Survey of India.
10. As prayed for by Mr. Singhanian, six months' time is fixed for completion of the entire exercise in terms of this order.
11. With these order and observations, **WPA 20344 of 2021** is **disposed of**.

(PARTHA SARATHI CHATTERJEE, J.)

