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

+ W.P.(C) 16495/2024 and CM APPL.69714/2024

VIKRAM SINGH LAMBA

.....Petitioner

Through: Mr. Prashanto Chandra Sen, Sr. Adv.
alongwith Mr. Tanmay Yadav, Ms.
Rashi Goswami, Advocates.

versus

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

Through: Mr. Jivesh Kumar Tiwari, (Senior
Panel Counsel) Advocate.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

21.05.2025

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1. The petitioner in the present petition is the owner and in possession of B-1/8, Safdarjung Enclave, New Delhi-110029 (hereinafter referred to as the 'the subject property').
2. The present petition has been filed by the petitioner being aggrieved by the alleged arbitrary and illegal actions of the respondent no.1/Archaeological Survey of India (ASI) and respondent no.3/Superintending Archaeologist, Delhi Circle, ASI in taking contradictory and divergent stands as regards the distance between the subject property and Tin Burji Wala Gumbad, a Centrally Protected Monument (CPM), situated in Village Mohammadpur, South Delhi.
3. On 25.05.2022, the petitioner, through his father, approached the Regional Director North, Archaeological Survey of India (ASI) seeking clarification / certification of the distance between the subject property and the CPM. The Regional Director North, ASI, in its email dated 27.05.2022, certified the distance between the subject property and the CPM, as per the



Total Station Method ('TSM Method') at approximately 101 meters. The aforesaid email dated 27.05.2022 has been filed along with the petition as Annexure P-5 and the same is reproduced hereunder:-

"On Friday, 27 May, 2022 at 07:39:49 pm IST, Regional Director <rdnorth.asi@gmail.com> wrote:

Sir,

This is in reference to your email dated 25.05.2022, it is to inform you that as per the available total station map, the shortest distance of the property no. B-1/8, Safdarjang Enclave from the nearest centrally protected monument ie Tin Burji Wala Gumbad is 101.00 meters (approx)."

4. Thereafter again, the respondent no.3, in its email dated 17.10.2022, *suo moto*, certified the distance between the subject property and the CPM at about 101 meters. The email dated 17.10.2022 has also been filed along with the present petition as Annexure P-6 thereto and is reproduced hereunder :-

On Monday, 17 October, 2022 at 03:11:15 pm IST, S.A. <circledelhi.asi@gov.in> wrote:

Respected Sir

With reference to your email dated 14.10.2022 on the subject cited above it is to inform you that there are 2 (Two) monuments in Muhammad pur village i.e.

- 1. Tin Burji Wala Gumbad, Mohammadpur village and*
- 2. Unnamed ! Tomb Mohammad Pur village*

Distance between B-1/8, Safdarjung Enclave, New Delhi 110029 to Tin Burji Wala Gumbad, Mohammadpur village is 101 meter approx.

and distance between B-1/8, Safdarjung Enclave, New Delhi 110029 to Unnamed ! Tomb Mohammad Pur village is 140 meter approx .

It is therefore requested kindly you must take the permission from the Competent Authority, Puratatva Bhavan, 1st Floor Block-D, GPO Complex, INA, New Delhi-110023

(email id : competentauthorityasi.delhi@gmail.com, competentauthority.asidelhi@gmail.com and

rdn10.asi@gov.in and telephone number 24654003)



*With regards ,
Superintending Archaeologist
Archaeological Survey of India,
Delhi Circle, Puratatva Bhavan,
3rd Floor Block-D, GPO Complex, INA,
New Delhi-110023
Email ID: circledelhi.asi@gov.in
Phone: 011 - 24654832
<https://amritmahotsav.nic.in/>”*

5. The aforesaid exercise is stated to have been undertaken as the petitioner intended to sell the subject property and therefore wanted to ascertain the distance between the subject property and the CPM inasmuch the restrictions imposed by the respondent no.1 on repair, renovation and rebuilding of a property within certain distance from CPM would have played a crucial role in determining the valuation of the subject property. It is stated that pursuant to the aforesaid communications, when the petitioner began invited bids for the subject property, it was brought to the knowledge of the petitioner's father that the subject property is situated in the prohibited area of CPM. In order to verify the aforesaid information, the petitioner's father approached the respondent nos.1 and 3.

6. Pursuant to various communications/representations by the petitioner's father, notwithstanding the categorical stand taken by the concerned respondents in the aforesaid communications, on 18.10.2023, the respondent no.3 took the stand that the distance between the subject property and the CPM is 93 meters. A copy of the said communication dated 18.10.2023 has been filed as Annexure P-10 with the present petition and is reproduced as under :-

*“To,
Sh. B. S. Lamba,
Email : bhupilamba@yahoo.co.in
Sub: - Certification of distance between B-1/8, Safdarjung Enclave, New*

*New Delhi – 110023
Dated: 18/10/2023*



Delhi 110029 and Tin Burji – reg.

Sir,

With reference to the subject cited above, it is to inform you that earlier distance of the Property B-1/8, Safdarjung Enclave, New Delhi – 110029 from the nearest CPM i.e. Tin Burji Wala Gumbad and Unnamed Tomb was given as 101 meters and 140 meters approx. respectively.

However, the present measurement has been taken from the nearest corner falling in the North West side of the case property. As per the Total Station Map the shortest distance of the said property from the nearest corner is 93 meters approx. from Tin Burji Wala Gaumbad, a Centrally Protected Monument.

This is for you kind information please. Any incontinence caused due to this is duly regretted.

Yours faithfully

Sd/-

Superintending Archaeologist”

7. Learned senior counsel for the petitioner contends that the stand taken by the respondents / ASI in the aforesaid communication dated 18.10.2023 is clearly fallacious. It is pointed out that while reducing the distance, the respondent no.3 did not provide end points / reference points from where the fresh distance was measured. As such, there is serious doubt as regards the veracity of the factual position as set out in the above communication dated 18.10.2023.

8. In view of the conflicting stand taken by the respondents, it is submitted that petitioner at its own cost engaged M/s Ravish Mehra Deepak Kalra, Architect Interiors and Environmental Planning (a private firm) and Unique Measurements (panel surveyor of the Government of NCT of Delhi) for measuring the distance between the subject property and CPM. The said firm furnished a report dated 18.12.2023 certifying the distance as 100.92 meters and the said panel surveyor furnished a report dated 02.01.2024 certifying distance as 100.199 meters.

9. It is submitted that the petitioner thereafter approached the concerned



respondents several times seeking redressal of its grievance and for carrying out fresh measurements.

10. It is submitted that pursuant thereto, a fresh measurement was carried out by the Surveyor/Habib Survey and Design Pvt. Ltd of the respondents on 05.02.2024, however, the same was done in the absence of the petitioner's father and even the said measurement report (which certifies the distance to be 94.05 meters) is completely silent on the end points / reference points from where the distance was measured.

11. Various subsequent representations were also addressed by the petitioner; however, the same remain unaddressed.

12. In the circumstances, the present petition has been filed.

13. It is apparent that the stand of the respondents as regards the distance between the Subject Property and the CPM has been vacillating and inconsistent.

14. It further appears that having certified that the distance between the subject property and CPM was above 100 meters, there was no reason to conduct a *suo moto* review thereof. There is also no mention of the exact reference points taken for the purpose of measurement, while seeking to hold that the distance is 93-94 meters.

15. In the circumstances, it would be apposite to resolve the issue by carrying out fresh measurements in the presence of the representative/s of the petitioner. Consequently, the following directions are issued:-

- i. The ASI shall conduct an inspection of the "Teen Burji Wala Gumbad" which is a Centrally Protected Monument (CPM), situated in Mohammadpur Village, South Delhi. The inspection will be done in the presence of the following representatives of the petitioner:-



- a) Mr. Syed Intikhad Ali, Blue Shell Consultancy & Services having its office at 146-A, Pkt-12, DDA LIG Flats, Jasola, New Delhi-110025 (Mob. No.: 8920179033; Email : unbeatenutab@gmail.com), an independent Surveyor nominated by the petitioner;
 - b) Mr. A. S. Chauhan, Former Joint Secretary, Ministry of Culture, and member of the petitioner's family;
 - c) The petitioner and/or his authorized representative/lawyer.
- ii. The inspection will consist of marking the outer limit of the CPM strictly in terms of the Notification dated 11.06.1924 bearing no. 1682 (1924 Notification). The said notification has identified the area of the CPM as 6804 sq. ft.
 - iii. No other structure shall be considered apart from the three Gumbads which are protected by the 1924 Notification for the purpose of measuring its outer limit.
 - iv. The inspection will also involve identifying and marking the end points of the property bearing No.B-1/8, Safdarjung Enclave, New Delhi-110029.
 - v. Thereafter, the distance between the CPM and the subject property may be measured using Total Station Method (TSM).
 - vi. The ASI shall thereafter prepare a report and submit the same with an advance copy to the petitioner, and his counsel, along with a map clearly indicating the (a) outer limit of the CPM on all sides, as may be identified and marked in terms of Paragraph 2; (b) the end points fixed at the subject property; (c) the distance between the CPM and the subject property from the end points which may be fixed in this



regard.

- vii. The Independent Surveyor nominated by the petitioner shall also be at liberty to conduct its own independent survey and measure the distance between the CPM and the subject property, in the presence of the official of the ASI. The Independent Surveyor may also prepare and place before the Court its Report along with a map clearly indicating (a) outer limited of the CPM on all sides, as may be identified and marked in terms of Paragraph 2; (b) the end points fixed at the subject property; (c) the distance between the CPM and the subject property from the end points which may be fixed in this regard.
- viii. The entire exercise shall be video-graphed by the ASI, and the video of the entire exercise shall be placed before the Court along with the Report.
- ix. Needless to state that the presence of all the persons present at the site, along with their designations, mobile number, email ids, address(es) etc., shall be duly recorded and shall form part of the Report which will be submitted by the ASI.
- x. If at any point during the course of fixing the end points or any other aspect related to the measurement, any party has any objection, the same shall be duly recorded in the form of an affidavit, and shall be placed before the Court.
- xi. The date and timing of the conduct of the Joint Inspection shall be communicated by the respondents to the petitioner and prior notice of at least 07 working days shall be given to the petitioner for the said purpose. The entire exercise shall be completed on the same day.



- xii. Let the distance between the subject property and the CPM be thereafter officially communicated to the petitioner in terms of the aforesaid exercise.
16. The petition is disposed of in the above terms. The pending application also stands disposed of.
17. Needless to say, if the petitioner is aggrieved by the outcome of the aforesaid exercise, he shall be at liberty to avail appropriate remedies as may be permissible under law.

SACHIN DATTA, J

MAY 21, 2025/r