
(2016) 08 MP CK 0030

MADHYA PRADESH HIGH COURT (INDORE BENCH)

Case No: W.P No. 5615 of 2015

Jasbir Bhandari

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Aug. 26, 2016

Acts Referred:

- Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1958 - Section 3, Section 4
- Constitution of India, 1950 - Article 226
- Madhya Pradesh Ancient Monuments and Archaeological Sites And Remains Act, 1964 - Section

Citation: (2016) 3 JabLJ 417

Hon'ble Judges: Shri Vivek Rusia, J.

Bench: Single Bench

Advocate: Shri R.T. Thanewala, learned Counsel, for the Petitioner; Shri Romesh Dave, learned Counsel, for the Respondent Nos. 1 and 2; Shri A.K. Sethi, learned senior counsel with Shri Rishabh Sethi, Advocate, for the Respondent No. 5; Shri Rishi Tiwari, learned C

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shri Vivek Rusia, J. - Petitioner is claiming to be the owner of part of Bhandari Kothi built on plot No.1, MG Road, Indore. The Bhandari Kothi is said to have held by Holkar Government and according to the petitioner it was built before 1920. Later on it was purchased by M/s Pannalal Nandalal Bhandari from the Holkar Govt. vide order No.88 dated 20.09.1937. Out of the total land, the father of the petitioner late Gajendra Singhji Bhandari purchased an area of 49906 sq. ft. from M/s Nandalal Bhandari. After the death of late Gajendra Bhandari petitioner and other legal heirs became the owner of the said property. According to the petitioner Bhandari Kothi is now more than 90 years old and has acquired the status of heritage monument. By virtue of building of archaeological

importance in the zoning plan of Indore Development Plan 2021, it was proposed to be preserved along with other building viz. Indra Bhavan. Petitioner and his family members have sentimental attachment with the building because of its historical and archaeological importance, therefore, they are interested in preserving the said building as heritage building. It has been alleged that respondents No.5 & 6 who are co-owner of the property are interested in demolition of the building for the purpose of construction of commercial complex which he came to know by way of advertisement published in the newspaper. Since respondents No.5 & 6 are in relation with the petitioner but their relation is not cordial, therefore, he has approached this Court seeking direction to the respondents No.1 to 4 to preserve the building of archaeological importance and not to sanction the plan of respondents No.5 & 6. Petitioner has prayed the relief that respondents No.1 to 4 be directed to observe and perform their statutory duty for implementation of draft Development Plan especially condition No.3.19.

2. Notices were issued in the writ petition and the respondents No.1,2 & 4 have filed the return in which it is stated that Bhandari Kothi is not included in the urban heritage and protected area and clause 3.19 provides that only after consultation and based upon the provisions of declaring property of archaeological importance, the premises can be included in the list of urban heritage or as protected area. The objections of the petitioner were considered by the competent authority and they decided vide order dated 27.8.2012 that declaration of private house/property as urban heritage is against the principle of natural justice. Vide letter dated 8.8.2014 the State Government has also clarified that the case of the petitioner cannot be considered to declare the Bhandari Kothi as monument of archaeological importance. It is also submitted that they have not taken any final decision on the application for development submitted by respondents No.5 & 6 and prayed for dismissal of the writ petition. Respondent No.2 filed the return by which the return filed by respondent No.1 was adopted.

3. Respondents No.5 & 6 have filed a detailed return stating that Govt. of India especially Archaeological Survey of India, New Delhi vide letters dated 23.11.12, 4.4.14, 17.8.15 and 4.4.15 has informed that Bhandari Kothi is not declared as urban heritage or the building having historical importance. According to the respondent A.S.I is the final authority in respect of declaration of heritage properties. The answering respondent has submitted that an application under section 29 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 has been made seeking sanction for the lay out plan. The Town & Country Planning Department has got confirmed vide letter dated 8.8.2014 from the Ministry of Environment that the claim for declaration of Bhandari Kothi as heritage building has been rejected and the application for sanction of the plan can be considered but because of the pendency of the petition the lay out plan has not been sanctioned by the Department, hence prayed for dismissal of the writ petition.

4. I have heard learned counsel for the parties.

5. That the entire claim of the petitioner is based on clause 4.8 of the Zoning Plan of Indore Development Plan, 2021 which is reproduced herein below:

"4.8-Zoning Plan-The existing building of Indra Bhavan, Bhandari Bhavan, at Mahatma Gandhi Marg, have a well defined architectural form and required to be preserved. No construction shall be permitted within the open land, the owner of the building may continue the present use."

6. Under the aforesaid clause Bhandari Kothi has not been declared as urban heritage by which only an opinion has been given that by virtue of the architectural form it is required to be preserved.

7. That in the proposed Indore Development Plan, 2021 as per para 3.19 along with other building Bhandari Kothi was also proposed to be included for preservation. On the basis of this claim State Government has considered the objection in detail and found that the Indore Development Plan 2021 has been finally modified and the claim of declaration of Bhandari Kothi as urban heritage has been rejected. That there was an enactment called Ancient Monument Preservation Act, 1904 in which the ancient monument was defined and under section of the said Act the Central Government by notification declares an ancient monument to be protected within the meaning of this Act. Thereafter the above Act was repealed by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the monuments notified under section 3 deemed to have been ancient and historical monument under the Act of 1958. Under section 3 & 4 of the Act of 1958 the Central Government is empowered to notify in the official gazette such ancient monuments and archaeological sites to be a national importance. Sections 3 & 4 of the above Act are reproduced below:-

3. Certain ancient monuments, etc., deemed to be of national importance-All ancient and historical monuments and all archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, or by Section 126 of the States Reorganization Act, 1956, to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purposes of this Act.

4. Power of Central Government to declare ancient monuments, etc. to be of national importance-(1)Where the Central Government is of opinion that any ancient monument or archaeological site and remains not included in Section 3 is of national importance, it may, by notification in the Official Gazette, give two months" notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance; and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification, object to the declaration of the monument, or the archaeological site and remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument or the archaeological site and remains; as the case may be, to be of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or the archaeological site and remains to which it relates is of national importance for the purposes of this Act.

8. The State of Madhya Pradesh has also enacted a law called the Madhya Pradesh Ancient Monument and Archaeological Sites and Remains Act, 1964 for preservation of certain ancient and historical monuments and archaeological sites. The ancient monuments are defined under section 2 (a) of the Act means any building structure, erection etc. which has been in existence for not less than hundred years. Section 2(a), (b) & (c) of the Act is reproduced below:

2. Definitions-In this Act, unless the context otherwise requires--

(a) "Ancient monument" means any building structure, erection, monolith or monument or any mound or tumulus or any tomb or place of interment or any cave or any sculpture or inscription on an immovable object which is of historical archaeological or artistic interest and which has been in existence for not less than hundred years and includes,

(i) the remains of such monument,

(ii) the site of such monument,

(iii) such portion of land adjoining the site of such monument as may be required for fencing or covering in or otherwise preserving the monument, and

(iv) the means of access to, and convenient inspection of, such monument.

(b) "antiquity" includes-

(i) any coin, sculpture, manuscript, epigraph, or other work of art or craftsmanship;

(ii) any article, object or thing detached from a building or cave;

(iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs morals or politics in bygone ages;

(iv) any articles, object or thing of historical interest, and

(v) any article, object or thing which in the opinion of the State Government because of its historical or archaeological importance is an article, object or thing which it is desirable to preserve declared by the State Government, by notification, to be an antiquity for the purposes of this Act, which has been in existence for not less than hundred years;

(c) "Archaeological site and remains" means any area which contains or is reasonably believed to contain ruins or relics of historical or archaeological importance which have been in existence for not less than hundred years, and includes-

(i) such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it; and

(ii) the means of access to, and convenient inspection of, the area.

9. In the aforesaid circumstances, under the Central as well as State Act there has to be a declaration by the Central Government as well as by the State Government as the case may be then only any structure would be treated as protected structure under the Act. The Supreme Court has considered the provisions of the aforesaid Act in the case of **Rajeev Mankotia v. Secretary to the President of India and others reported in (1997) 10 SCC 441**. In para-4, 5 & 6 of the aforesaid order, the Supreme Court has held as under:

4. Before considering whether the Viceregal Lodge should be declared as historical heritage (monuments), let us have a look at the legal setting in that behalf. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short, the 'Ancient Monuments Act') provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance. The Act was enacted to clarify the legal position that the Central Government regulates exclusively ancient monuments etc. of national importance, leaving the field open to the State legislatures to enact the law on the subject, i.e., ancient monuments of State importance. Section 2(a) defines "ancient monument" to mean "any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes

(emphasis supplied):

(i) the remains or an ancient monument;

(ii) the site of an ancient monument;

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument ; and

(iv) the means of access to, and convenient inspection of an ancient monument."

5. Section 3 of the Act declares that all ancient and historical monuments and archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act 1951, or by Section 126 of the States Reorganisation Act, 1956, to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purpose of this Act. Section 4 empowers the Central Government to declare any ancient monuments or archaeological site and remains not included in Section 3 to be of national importance by giving two months notice of its so declaring. The Ancient Monuments Preservation Act, 1904 provides for the preservation of ancient monuments and objects of archaeological, historical or artistic interest. Section 2(1) defines "ancient monument" in the same language as Section 2(a) of the Ancient Monuments Act. Section 2 (4) defines `maintain' and `maintenance' to include the fencing, covering in, repairing, restoring and cleaning of protected monument and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto. Section 3 deals with `protected monuments' and empowers the Central Government, by a notification in the official Gazette, to declare an ancient monument to be a protected monument under the said Act. Section 11 enjoins that the Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in Section 4 or which the Government has acquired under Section 10 etc.

6. It would, therefore, be manifest that all ancient and historical monuments and all archaeological sites and remains or any structure, erection or monument of any tumulus or place of interment shall be deemed to be ancient and historical monument or archaeological sites and remains of national importance and shall be so declared for the purpose of Ancient Monuments Act if they have existed for a century; and in the case of a State monument, of State importance covered by the appropriate State Act. The point of reference to these provisions is that an ancient monument is of historical, cultural or archaeological or sculptural or monolithic or artistic interest existing for a century and is of national importance or of State importance. In other words, either of them are required and shall be protected, preserved and maintained as national monuments or State monuments for the basis which not only gives pride to the people but also gives us insight into the past glory of our structure, culture, sculptural, artistic or archaeological significance, artistic skills and the vision and wisdom of our ancestors, which should be preserved and perpetuated so that our succeeding generations learn the Skills of our ancestors and our traditions, culture and civilization. They would have the advantage to learn our art, architecture, aesthetic tastes imbibed by the authors of the past and to continue the same tradition for the posterity. Preservation and protection of ancient monuments, is thus the duty of the Union of India and the State Governments concerned in respect of ancient monuments of national importance or those of State importance respectively to protect, preserve and maintain them by preserving or restoring them to

their original conditions.

9. The State Government within the powers granted under section 3 of the Act can declare ancient monuments to be State protected monuments or archaeological sites to be a State-protected area. Section 3 of the Act of 1964 is reproduced below:

3. Power of State Government to declare ancient monuments to be State-protected monuments or archaeological sites and remains to be State-protected area

(1) Where the State Government is of the opinion that it is necessary to protect against destruction, injury, alteration, mutilation, defacement, removal, dispersion or falling into decay any-

(a) ancient monument,

(b) archaeological site and remains,

it may, by notification in the Official Gazette give two months's notice of its intention to declare such ancient monument to be a State-Protected monument or such archaeological site and remains to be a State-protected area, as the case may be, and a copy of every such notification shall be affixed in a conspicuous place on or near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within one month after the issue of notification, object to the declaration of the monument to be a State-protected monument or of the archaeological site and remains to be a State protected area, as the case may be.

(3) On the expiry of the said period of two months the State Government may, after considering the objections, if any, received by it, declare by notification in the Gazette, the ancient monument to be a State protected monument or the archaeological site and remains to be State-protected are, as the case be.

(4) A notification published under this section shall, unless and until withdrawn, be conclusive evidence of the fact that the monument or the archaeological site and remains to which it relates, is a State protected monument or State protected area, as the case may be.

10. That the State Government under The Madhya Pradesh Ancient Monuments and Archaeological Sites and Remains Act, 1964 is required to declare the property to be an ancient or archaeological site and remains by way of notification. No such notification has been issued by the State Government under the said Act for Bhandari Kothi. The property can be declared as an ancient monument if the State Government is of the opinion that it is necessary to protect the same. A complete procedure has been provided under the aforesaid Act to be followed before ordering such declaration.

11. That the Archaeological Survey of India has also clarified vide various letters that Bhandari Kothi is not a urban heritage and ancient monument to be preserved, therefore, all the competent authorities have taken a unanimous decision that Bhandari Kothi is not a heritage building or ancient monument to be protected. In the result the petitioner cannot claim such a relief from the Court by way of writ petition. Apart from that Archaeological Survey of India has also not been impleaded as one of the respondents in this petition. When all the competent authorities have already taken a decision in this behalf, no writ can be issued to the respondents for such a declaration. The petitioner has not challenged those decisions in this writ petition so far.

12. In view of the aforesaid discussion, the petition fails and is hereby dismissed.