

(2019) 02 DEL CK 0203

**Delhi High Court**

**Case No:** Civil Writ Petition No. 4099 Of 2018, Civil Miscellaneous Nos. 16145, 46395 Of 2018

Rajeev Suri

APPELLANT

Vs

Archaeological Survey Of India  
And Ors

RESPONDENT

**Date of Decision:** Feb. 20, 2019

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Ancient Monuments and Archaeological Sites and Remains Act, 1956 - Section 4(1), 4(2), 4(3)
- Delhi Ancient and Historical Monuments and Archaeological Sites and Remains Act, 2004 - Section 4

**Hon'ble Judges:** Rajendra Menon, CJ; V. Kameswar Rao, J

**Bench:** Division Bench

**Advocate:** Jayant Tripathi, Mayantara Roy, Dinesh Dahiya, Vikas Mahajan, Deepak Goyal, Rakesh Sinha, Jeemon Raju

**Final Decision:** Dismissed

**Judgement**

V. Kameswar Rao, J

1. This writ petition has been filed by the petitioner with the following prayers:

“That in the facts and circumstances set out in the petition, and the Grounds taken therein, it is most respectfully prayed that this Hon<sup>ble</sup> Court

be graciously pleased to:-

A. Issue a Writ of Certiorari calling for the records pertaining to the monument of “Shaikh Ali Gumti” in Defence Colony available with the

Respondents, and especially the records pertaining to the proposal to declare the same to be a monument of national importance as available with the

Respondent Nos.1 and 2;

B. Issue a Writ of Mandamus, or any other appropriate Writ, Order or Direction as may be deemed appropriate, commanding the respondent Nos.1

and 2 to carry out its statutory duty and issue a Gazette Notification under Section 4(3) of the Ancient Monuments and Archaeological Sites and

Remains Act, 1956, declaring the ancient monument of "Shaikh Ali Gumti" in Defence Colony as a monument of national importance;

OR IN THE ALTERNATIVE

B. Issue a Writ of Mandamus, or any other appropriate Writ, Order or Direction as may be deemed appropriate, commanding the respondent No.5 to

carry out its statutory duty and issue a Gazette Notification under Section 4 of the Delhi Ancient and Historical Monuments and Archaeological Sites

and Remains Act, 2004, declaring the ancient monument of "Shaikh Ali Gumti" in Defence Colony as a protected monument under the said Act;

C. Pass such other and further orders as may be required, binding down the Respondents to take appropriate steps for the protection, preservation and maintenance of the ancient monument of "Shaikh Ali Gumti" in Defence Colony.

D. Pass such other and further orders as may be considered appropriate in the present case."

2. In substance, the present petition has been filed by the petitioner seeking protection under the provisions of the Ancient Monuments and

Archaeological Sites and Remains Act, 1958 (in short "AMASR Act") of a monument situated in Defence Colony which is called as "Gumti

of Shaikh Ali".

3. The petitioner through his counsel Mr. Jayant Tripathi had contended that "Gumti" finds mention in the exhaustive and seminal survey of the

monuments of Delhi, carried out in 1920's by Maulvi Zafar Hasan, the then Deputy Superintending Archaeologist, published in 1926 by the ASI as

"List of Muhammadan and Hindu Monuments". According to Mr. Tripathi, a perusal of the entry of 1926 regarding the said monument, it was

mentioned that the tomb is of the Lodi period.

There are two unknown graves, and the monument should be protected. He made a reference to a publication of the Indian National Trust for Art and Cultural Heritage in its book, titled "Delhi: The Built Heritage" in 1999.

4. He has referred to the fact that in the year 2004, the Archaeological Survey of India, Delhi Circle, had identified the "Gumti" as of national importance and had initiated the process of declaring it to be a monument of national importance, worthy of protection under the AMASR Act.

According to him, it was only on inspection of the monument and its condition carried out by the officials of the ASI, the ancient monument was found worthy of protection as a monument of national importance.

5. Mr. Tripathi had also referred to the fact that the Defence Colony Residents Association has been using the "Gumti" as its office. He also refers to a Notification issued under Section 4(1) of the AMASR Act by the Department of Cultural / Archeological Survey of India on February 09, 2004. He made a reference to the objections filed by the Residents Association under Section 4(2) of the AMASR Act, objecting to "Gumti" being declared as a monument of national importance.

6. Suffice it to state that even the comments of the Superintending Archaeologists were also sought on the objections filed by the Defence Colony Residents Association, wherein the Superintending Archaeologists wrote to the Director General of the Archaeological Survey of India inter alia stating that since the "Gumti" under reference is under occupation of the Residents association and certain additions / alterations have been made over a period of time, therefore, these observations may be taken into consideration before issuing confirmatory notification.

7. The respondent No.1 has filed the counter affidavit, wherein they have stated that the Central Government is the authority to take final decision with regard to declaring any monument as a national monument or centrally protected monument. So far as Gumti of Sheikh Ali situated in Defence Colony, New Delhi is concerned, the Central Government has already examined the issue and it was decided against notifying the said monument as a protected monument under the AMASR Act, 1958. It is their case that it is not possible to bring the monument under protection of AMASR as the

Residents Association had carried out major additions / alterations due to which the "Gumti" has lost its originality.

8. Having considered the issue and the stand of the Central Government which is the Competent Authority to declare a monument as monument of

national importance and that the "Gumti", because of the alteration made by the Defence Colony Residents Association, has lost its originality, this

Court is of the view that it cannot substitute the decision of the Central Government with its own view, more particularly when the experts belonging

to the Archaeological Survey of India have undertaken the inspection of the monument in question, resulting in the impugned decision.

9. The reliance placed by Mr. Jayant Tripathi, learned counsel appearing for the petitioner during the course of his submissions on the notification

dated February 09, 2004 would not help his case as that was only a notification under Section 4 of the AMASR Act which is in the nature of a

provisional decision seeking objections before declaring a monument as a Monument of national importance. The decision having been taken in the

year 2008 by the Central Government not to declare the "Gumti" as a monument of national importance, this Court is of the view that the prayers

as made by the petitioner cannot be granted by this Court in exercise of its power under Article 226 of the Constitution of India.

10. The writ petition is accordingly dismissed.

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Dismissed as infructuous.