

A ARDHENDU KUMAR DAS

v.

THE STATE OF ODISHA AND ORS.

(Civil Appeal No. 4515 of 2022)

B JUNE 03, 2022

[B. R. GAVAI AND HIMA KOHLI, JJ.]

- Archaeological Sites: Ancient Monuments and Archaeological Sites and Remains Act, 1958 – ss.2, 20C, 20D – Public work or project essential to the public – PIL filed before High Court challenging construction undertaken by respondent Nos. 1 and 2 within the prohibited area of the Shree Jagannath Temple complex on the ground that it contravened provisions of the 1958 Act – Their grievance in the instant appeal was that High Court did not grant an interim order restraining respondents from proceeding further with the construction – Held: All the provisions of the 1958 Act have to be read harmoniously – When sub-section (4) of s.20A of the Act is read in harmony with clause (dc) of s.2 and the provisions of s.20C and s.20D of the Act, the submission that no construction at all can be made in the prohibited area or the regulated area would be unsustainable – Competent authority has complied with the procedure as required under s.20D of the Act and the National Monuments Authority has granted its permission for the work, which is undertaken – The legislature has deliberately excluded four categories from the definition of “construction” – The purpose behind it appears to be that the repairs and renovation of the buildings, which are existing and the constructions which are necessary for providing basic facilities like drainage, toilets, water supply and distribution of electricity should be kept out of the rigour of requirement of statutory permissions – The argument that the said provision is only to enable a person who resides in the prohibited area to get his existing structure re-constructed, repaired and renovated and the said provision cannot come to the aid of the State to create facilities for the public is rejected – If an individual person can construct a toilet in a prohibited area, so can the State, when the State finds it necessary to do it in the larger public interest for providing basic facilities to the lakhs of devotees visiting the*

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shrine – The activities undertaken by State are completely in tune with the directions issued by this Court in the case of Mrinalini Padhi– They are necessary in the larger public interest and there is no prohibition in the statute for doing so, as sought to be argued by the appellants – High Court also recorded the statement of Advocate General that both the ASI and the State Government would work together to ensure that no archaeological remains are missed out or damaged – PIL filed before the High Court rather than being in public interest, is detrimental to the public interest at large – Frivolous petitions encroach upon a valuable judicial time which could be otherwise utilized for considering genuine issues – The appeals, having been found to be without any substance, are dismissed with costs, quantified at Rs.1,00,000/- each, payable by the appellants to respondent No.1 within four weeks – Public interest litigation.

Public interest litigation: Practice of filing frivolous petitions – Depreciated – Frivolous petitions are nothing but abuse of process of law – They encroach upon a valuable judicial time which could be otherwise utilized for considering genuine issues – It is high time that such so-called public interest litigations are nipped in the bud so that the developmental activities in the larger public interest are not stalled.

Dismissing the appeals, the Court

HELD: 1. The definition of “construction” in Clause (dc) of Section 2 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 specifically excludes: (i) Re-construction, repair and renovation of an existing structure or building; (ii) Construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences; (iii) Construction and maintenance of works meant for providing supply of water for public; and (iv) Construction or maintenance, extension, management for supply and distribution of electricity to the public or provision for similar facilities for public. [Para 36][376-B-D]

2. Sub-section (4) of Section 20A of the Act prohibits any permission including the one for carrying out any public work or project essential to the public or other constructions in any prohibited area referred to in sub-section (3) thereof on and after

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- A the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the assent of the President. The same was brought into the statute book by Act No. 10 of 2010. It is further to be noted that by the very same amendment, Section 20C of the said Act has also been brought into the statute book. Sub-section (1) of Section 20C of the said Act provides that any person, who owns any building or structure, which existed in a prohibited area before 16th June, 1992, or, which had been subsequently constructed with the approval of the Director-General and desires to carry out any repair or renovation of such building or structure, may
- B make an application to the competent authority for carrying out such repair or renovation, as the case may be. Likewise, sub-section (2) of Section 20C of the said Act enables a person, who owns or possesses any building or structure or land in any regulated area, and desires to carry out any construction or reconstruction or repair or renovation of such building or structure on such land, as the case may be, to make an application to the competent authority for carrying out construction or reconstruction or repair or renovation, as the case may be. Section 20D of the said Act deals with grant of permission by competent authority within regulated area. Sub-section (1) of Section 20D of
- C the said Act provides that an application for grant of permission under Section 20C of the said Act, shall be made to the competent authority. Sub-section (2) thereof requires the competent authority to forward the same to the authority to consider and intimate impact of such construction having regard to the heritage bye-laws relating to the concerned protected monument or protected area. Under proviso to Sub-section (2) thereof, the Central Government is empowered to prescribe the category of applications in respect of which the permission will be granted under this sub-section and the applications which shall be referred to the authority for its recommendations. Under sub-section (3)
- D thereof, the authority is required to intimate, within two months from the date of receipt of application under sub-section (2) thereof, to the competent authority, the impact of such construction etc. Under sub-section (4) thereof, the competent authority is required to either grant permission or refuse the same as so recommended by the authority within one month of
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the receipt of intimation from the authority under sub-section (3) A
thereof. Under sub-section (5) thereof, a finality is given to the
recommendations of the authority. [Para 37-39][376-D-H; 377-
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3. It is a settled principle of law that all the provisions in B
the statute have to be read harmoniously. It is presumed that
each and every provision has been brought by the legislature
into the statute book with some purpose. A particular provision
cannot be read in isolation and has to be read in context to each
other. An attempt has to be made to reconcile all the provisions
of the statute together, unless it is impossible. At first blush, the
arguments of the appellants on the basis of sub-section (4) of C
Section 20A of the said Act may appear to be attractive. But when
sub-section (4) of Section 20A of the said Act is read in harmony
with clause (dc) of Section 2 and the provisions of Sections 20C D
and 20D of the said Act, this Court finds that the submission that
no construction at all can be made in the prohibited area or the
regulated area, would be unsustainable. Firstly, clause (dc) of E
Section 2 of the said Act itself excludes four categories from the
definition of “construction”. The legislative intent is thus clear
that the four categories which are excluded from the definition of F
“construction” as defined in clause (dc) of Section 2 of the said
Act would not be treated as a “construction”, wherever the said
term is referred to in the statute. The legislative intent is clear
that the re-construction, repair, renovation of the existing G
buildings has been excluded from the definition. Similarly, the
construction, maintenance etc. of drains, drainage works, public
latrines and urinals; the construction and maintenance of works
meant for providing supply of water to public; and construction
etc. for distribution of electricity, which could be construed to be
essential services for catering to the needs of the public at large,
have consciously been kept out of the definition of “construction”.
It could be presumed that the legislature was aware that repairs H
and reconstruction of existing structures or buildings or
construction of essential facilities like public latrines, urinals,
water supply and electricity distribution for the pilgrims/residents
are basic necessities and as such, should be permitted even in
the prohibited area. If it is not so interpreted, then Section 20C

- A of the said Act would be rendered otiose and redundant. An interpretation which leads a particular provision to be otiose or redundant or meaningless, has to be avoided. [Paras 40-42][377-F-H; 378-A-D]
 - 4. Section 20D of the Act deals with the entire procedure
- B regarding grant of permission by the competent authority within regulated area. Undisputedly, in the present case, the competent authority has complied with the procedure as required under Section 20D of the said Act and the authority, i.e., the NMA has granted its permission for the work, which is undertaken. It could thus clearly be seen that the Director-General has observed that
- C the amenities which fall within the prohibited area of the temple are required for the devotees, and therefore, it was agreed that this may be allowed. It was further observed that the ASI would work in coordination with the State Government on the design so that there is no visual impact on the main temple. The State
- D Government was also requested to keep the entire design simple in tandem with the spiritual nature of the entire temple complex. In the impugned order, even the Division Bench of the High Court has recorded the statement of the Advocate General to the effect that both ASI and the State Government would work together.
- E Insofar the reception area is concerned, the impugned order would also reveal that the learned Advocate General has clarified that it will now be moved out of the prohibited area and it will be constructed in the regulated area. [Paras 44, 46 and 47][378-G-H; 380-B-D]
- F 5. It could thus clearly be seen that even the Director-General of ASI has recognized the potential of Puri and Ekamrakshetra for being taken up as World Heritage sites. It was agreed that all the work in both the places would be designed and executed keeping in mind the possibility of developing them for being acknowledged as World Heritage Sites. The affidavit of
- G the Superintending Archaeologist, ASI would also reveal that there does not appear to be any serious objection with regard to construction of works such as toilets, drains and electrical works in the prohibited area. There also does not appear to be any serious objection with regard to undertaking construction in the regulated area. [Paras 49 and 50][380-H; 381-A-B]
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6. Taking into consideration all these aspects of the matter, it is amply clear that the construction activities which are being undertaken, are being undertaken in pursuance of the directions issued by a three Judge Bench of this Court in the case of *Mrinalini Padhi*. The construction is being carried out for the purpose of providing basic and essential amenities like toilets for men and women, cloak rooms, electricity rooms etc. These are the basic facilities which are necessary for the convenience of the devotees at large. As already discussed hereinabove, the legislative intent appears to be clear. The legislature has deliberately excluded four categories from the definition of “construction”. The purpose behind it appears to be that the repairs and renovation of the buildings, which are existing and the constructions which are necessary for providing basic facilities like drainage, toilets, water supply and distribution of electricity should be kept out of the rigour of requirement of statutory permissions. [Para 51][381-D-F]

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7. If an individual person can construct a toilet in a prohibited area; can the State be denied to do so, when the State finds it necessary to do it in the larger public interest for providing basic facilities to the lakhs of devotees visiting the shrine? The answer is an emphatic ‘no’. [Para 52][381-G-H]

8. In the recent past, there is mushroom growth of public interest litigations. However, in many of such petitions, there is no public interest involved at all. The petitions are either publicity interest litigations or personal interest litigation. This Court highly deprecates practice of filing such frivolous petitions. They are nothing but abuse of process of law. They encroach upon a valuable judicial time which could be otherwise utilized for considering genuine issues. It is high time that such so-called public interest litigations are nipped in the bud so that the developmental activities in the larger public interest are not stalled. In the result, the appeals, having been found to be without any substance, are dismissed with costs, quantified at Rs.1,00,000/- each, payable by the appellants to the respondent No.1. [Paras 59 and 60][382-G-H; 383-A]

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- A *Mrinalini Padhi v. Union of India and others (2019) 18 SCC 1 : [2019] 16 SCR 811 – referred to.*

Case Law Reference

[2019] 16 SCR 811	referred to	Para 15
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- B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4515 of 2022.

From the Judgment and Order dated 09.05.2022 of the High Court of Orissa at Cuttack in Writ Petition (Civil) No.6257 of 2022.

With

- C Civil Appeal No. 4516 of 2022.

Ms. Priya Hingorani (AC) Ms. Mahalakshmi Pavani, Vinay Navare, Kapil Sibal, Pinaki Mishra, A. D. N. Rao, Sr. Advs., Ashok Parija, Adv. General, Himanshu Yadav (AC), Anirudh Jamwal (AC),

- D Tomy Chacko, Ankolekar Gurudatta, Gautam Das, Sangram Pattnaik, Dhirendra Kumar Jha, Merusagar Samantaray, Joydip Roy, Rahul G. Tanwani, Parvartak Pathak, Tapas Parida, C. M. Gopal, Ms. Vandana Miglani Bebartha, Ms. Smita Samantaray, Dr. Akash Kaushik, Gaurav Khanna, Arnav Behera, Avnish Kumar Sharma, Dhananjaya Mishra, Pai Amit, Ms. Pankhuri Bhardwaj, Swetarenu Mishra, Sanjay K. Das, E V. K. Monga, Annam Venkatesh, D. Shiva Shankar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

B. R. GAVAI, J.

- F 1. Both these petitions challenge the interlocutory order dated 9th May, 2022, passed by the Division Bench of the High Court of Orissa at Cuttack, in Writ Petition (Civil) No.6257 of 2022, wherein the Division Bench of the High Court has recorded certain submissions and statements made by the learned Advocate General appearing on behalf of the State of Odisha and directed the matter to be posted on 22nd June, 2022 along with Writ Petition (Civil) No. 10153 of 2022. From the tenor of the arguments advanced by the learned counsel for the petitioners, it appears that they are basically aggrieved since the High Court has not granted an interim order restraining the respondents from proceeding further with the construction.

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2. The factual background leading to the filing of the present A proceedings is thus:

3. A Public Interest Litigation being Writ Petition (Civil) No.6257 of 2022 came to be filed before the High Court of Orissa by one Dillip Kumar Baral challenging the alleged unsanctioned and unauthorised construction activities undertaken by the respondent Nos. 1 and 2 within the prohibited area of the Shree Jagannath Temple complex in contravention of the provisions of The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as “the said Act”)

4. It appears that initially the said writ petition was listed before the Division Bench of the High Court on 8th April, 2022, on which date, certain statements made by the learned Advocate General were taken on record. Subsequently, when the matter was listed on 21st April, 2022, certain further orders came to be passed. Subsequently, the order dated 9th May, 2022 has been passed by the High Court, which is impugned in D the present Special Leave Petitions.

5. The petitioner-Ardhendu Kumar Das in Special Leave Petition (Civil) Diary No.16718 of 2022 is not the petitioner before the High Court. However, he claims to be an ardent devotee of Lord Jagannath and therefore, had filed an Intervention Application before the High Court, which is pending consideration. The petitioner has therefore filed an Interlocutory Application seeking permission to file the present Special Leave Petition challenging the order dated 9th May, 2022 of the Division Bench of the High Court.

6. The petitioner-Sumanta Kumar Ghadei in Special Leave Petition (Civil) Diary No.17078 of 2022 is also not the petitioner before the High Court. The said petitioner had also filed an Intervention Application in the writ petition before the High Court, which is pending adjudication. The said petitioner claims to be a social activist and businessman, who is a devotee of Lord Jagannath and also claims to have done research and F has keen interest in ancient monuments and sculptures of the State.

7. Taking into consideration the fact that larger issues involving public interest are involved, we allow the said applications for permission to file Special Leave Petitions. We also grant leave in both these Special Leave Petitions.

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- A 8. An impleadment application has been filed by Raghunath Gochhikar and others, who claim to be Sevayats. The applicants support the stand of the State Government. We are inclined to allow their application and permit them to intervene. It is ordered accordingly.
- B 9. We have heard Ms. Mahalakshmi Pavani, learned Senior Counsel appearing on behalf of the appellant-Ardhendu Kumar Das, Mr. Vinay Navare, learned Senior Counsel appearing on behalf of the appellant-Sumanta Kumar Ghadei, Mr. Ashok Parija, learned Advocate General for State of Odisha, Mr. Kapil Sibal and Mr. Pinaki Mishra, learned Senior Counsel appearing on behalf of the respondent-State,
- C C Mr. A.D.N. Rao, learned Senior Counsel appearing on behalf of the Archaeological Survey of India (“ASI” for short), Mr. Swetaretu Mishra, learned counsel appearing on behalf of the respondent Nos. 5 to 7-Shree Jagannath Temple Managing Committee and Mr. Pai Amit, learned counsel appearing on behalf of the applicants/intervenors/impleaders.
- D 10. Ms. Mahalakshmi Pavani, learned Senior Counsel submits that in view of sub-section (4) of Section 20A of the said Act, no permission can be granted for carrying out any public work or project essential to the public or other constructions in any prohibited area on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the
- E E assent of the President. Ms. Pavani further submitted that the communication dated 5th February, 2022, addressed by the Conservation Assistant, ASI, to the Sr. Project Manager, OBCC, would show that the respondent Nos. 1 and 2 were carrying out unauthorised construction within the prohibited area of the Centrally Protected Monument of Shree Jagannath Temple. She further submits that the inspection report would reveal that there are serious irregularities in the work carried out by the respondents-State. She further submits that voluminous excavation is being done near the Temple, which would be hazardous to the Temple, which is an old structure.
- G 11. Shri Vinay Navare, learned Senior Counsel submits that insofar as the so-called “No Objection Certificate” (“NOC” for short) issued by the National Monuments Authority (“NMA” for short) dated 4th September, 2021, is concerned, the said Authority has no authority in law to permit construction. Relying on the provisions of Section 20-I of the said Act, he submits that NMA is only a recommendatory authority
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and has no authority in law to permit any construction either in the prohibited area or in the regulated area. He further submits that if any construction activity is to be undertaken in a prohibited area, the same has to be undertaken only by the ASI and by no other authority.

12. Both the learned counsel therefore submit that it is necessary to injunct the respondents-State from carrying out any further construction activity during the pendency of the present appeals.

13. Shri Ashok Parija, learned Advocate General, submits that under clause (da) of Section 2 of the said Act, the word "Authority" has been defined to mean the NMA constituted under Section 20F. He submits that clause (db) of Section 2 of the said Act defines "competent authority" to mean an officer not below the rank of Director of archaeology or Commissioner of archaeology of the Central or State Government or equivalent rank, specified, by notification in the Official Gazette, as the competent authority by the Central Government. He submits that the Government of India vide Notification dated 13th February, 2012, in exercise of the powers conferred by the proviso to clause (db) of Section 2 of the said Act has notified Director, Culture, Department of Tourism and Culture (Culture), Government of Odisha, Bhubaneshwar as the "competent authority" for the State of Odisha for the purpose of Sections 20C and 20D of the said Act. The learned Advocate General further submits that "grant of permission by competent authority" is regulated by Section 20D of the said Act. He further submits that in view of the provisions of Section 20D of the said Act, the competent authority for the State of Odisha had made an application for grant of NOC to NMA. NMA vide order dated 4th September, 2021 granted its NOC for carrying out various works within the prohibited area and the regulated area.

14. The learned Advocate General further submitted that clause (dc) of Section 2 of the said Act defines "construction". He submits that the definition specifically excludes any re-construction, repair and renovation of an existing structure or building, or, construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences, or, the construction and maintenance of works meant for providing supply of water for public, or, the construction or maintenance, extension, management for supply and distribution of electricity to the public or provision for similar facilities for public.

- A 15. The learned Advocate General further submitted that the three-Judge Bench of this Court in the case of *Mrinalini Padhi vs. Union of India and others*¹ has itself found that it was necessary to construct separate toilets for male and female. He further submitted that this Court in the said case itself has directed ASI to cooperate and to permit the activities of improvement which are necessary for providing facilities to the public at large.

- B 16. Mr. Pinaki Mishra, learned Senior Counsel, submits that taking into consideration the fact that there was serious inconvenience to the devotees who throng in lakhs during the Rath Yatra period, it was found necessary that the area within the radius of 75 meters surrounding the Temple be cleared for passage to the devotees. He submitted that on an average, about 60,000 devotees visit the Temple every day. There are no proper queues for the devotees to maintain discipline and enter the Temple. He submits that the basic facilities like toilets for women and men were lacking. As such, taking into consideration the larger public interest, the Government had acquired the buildings in the vicinity which were constructed as lodges decades ago, by spending an amount of Rs. 700 crores. He submitted that the entire area surrounding the Temple was acquired through negotiations without resorting to the provisions of the Land Acquisition Act. He submits that these buildings were owned by Sevayats, who are also not opposing the developmental work surrounding the Temple and, on the contrary, support the same.

- C 17. Mr. Pai Amit, learned counsel appearing on behalf of the applicants/interveners/impleaders and Mr. Swetarenu Mishra, learned counsel appearing on behalf of Shree Jagannath Temple Managing Committee also support the submissions made by the learned Advocate General.

- D 18. Mr. A.D.N. Rao, learned Senior Counsel appearing for ASI submits that the stand of the ASI is reflected in the affidavit filed before the High Court of Orissa and states that the ASI has no objection to the construction being carried out strictly in conformity with the provisions of law.

- E 19. Though the present appeals challenge the interlocutory order passed by the Division Bench of the High Court, since lengthy arguments

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have been advanced on behalf of both the parties, we find it appropriate A
to consider the submissions on merits, as advanced.

20. Before we consider the challenge with regard to violation of
the statutory provisions, it will be apposite to refer to an earlier decision
of this Court, which will have a bearing on the decision in the present
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21. A three-Judge Bench of this Court in the case of *Mrinalini Padhi* (supra), had an occasion to consider the situation prevailing in the vicinity of Shree Jagannath Temple. This Court in the said case had initially passed an order on 8th June, 2018, directing the District Judge, Puri to submit a report. This Court thereafter vide order dated 9th January, 2019, appointed Shri Ranjit Kumar, learned Senior Counsel as Amicus Curiae and Ms. Priya Hingorani, learned Senior Counsel was requested to assist him in the matter. Shri Ranjit Kumar, learned Amicus Curiae has submitted interim reports from time to time on the basis of which certain orders came to be passed. Finally, vide the order dated 4th November, 2019, this Court issued various directions. While issuing the directions, this court had also taken on record the views of various stakeholders. C

22. This Court in paragraph 17 of the judgment in the case of *Mrinalini Padhi* (supra) had found that redevelopment plan around the Temple is mainly to decongest the area for the benefit of pilgrims and to make the city of Puri a world heritage city. This Court also recorded that nobody was opposing the reforms for the betterment of the place. This Court also noticed in paragraph 18 that during the annual Rath Yatra, lakhs of people visit the Temple town and the congregation is unmanageable. D

23. This Court took on record the observations of Shri Ranjit Kumar, learned Amicus Curiae as well as Ms. Priya Hingorani, learned Senior Counsel, who had personally visited the Temple premises. A perusal of the order would reveal that this Court had also requested Shri Tushar Mehta, learned Solicitor General of India to personally visit the Temple premises. From their observations, it was found that the Temples inside the Mathas, their Gaadis, Samadhis and other artefacts have been preserved. E

24. In paragraph 40, this Court issued various directions. In paragraph 40.15, this Court directed that there was necessity to have a F

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- A proper darshan by people at large. It was also directed that it was necessary to avoid commotion and chaos as large number of pilgrims visit the Temple every day. This Court therefore directed the Temple Administration and the Chief Administrator including the State Government to prepare a roadmap with the help of experts for having proper darshan by the devotees/pilgrims. In paragraph 40.16, this Court further directed the Temple administration and also the Temple police to ensure that there would be a dedicated section of personnel to tighten security inside the Temple and ensure that no such incident takes place in the Temples and no misbehaviour is meted out to women.
- B 25. It will also be relevant to reproduce the directions in paragraph 40.19 and 40.20, which read thus:
 - “40.19.** The learned Amicus Curiae has also pointed out that there is a necessity for separate toilets for male and female. We direct that let the toilets be provided with modern amenities and should be kept absolutely clean. The number of toilets shall be adequate having regard to the average footfall in the temple, which is large in number.
 - 40.20.** There is a necessity pointed out about the cloak rooms. Let steps be taken by the Temple administration in this regard.”
- C 26. It could thus be seen that the three-Judge Bench of this Court has emphasized on the necessity to have separate toilets for male and female. This Court further directed that the toilets be provided with modern amenities and should be kept absolutely clean. This Court also directed that the number of toilets shall be adequate having regard to the average footfall in the Temple. This Court further emphasized the necessity to have cloak rooms and directed the Temple administration to take steps in that regard.
- D 27. This Court further directed the ASI to cooperate and to permit the activities of improvement which are not *prima facie* objectionable and are necessary for public hygiene, sanitation and public health. This Court only put a rider that the form of the new structure is maintained in the same manner as the ancient one.
- E 28. It would thus clearly reveal that the nature of construction which is undertaken by the respondents-State and the Temple administration is in tune with the directions issued by this Court.

29. In this background, we will proceed to consider the submissions A with regard to the violation of the provisions of the said Act.

30. Clauses (da), (db) and (dc) of Section 2 of the said Act define “Authority”, “competent authority” and “construction” respectively, which are as under:

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

(a)

(da) “Authority” means the National Monuments Authority C constituted under Section 20-F;

(db) “competent authority” means an officer not below the rank D of Director of Archaeology or Commissioner of Archaeology of the Central or State Government or equivalent rank, specified, by notification in the Official Gazette, as the competent authority by the Central Government to perform functions under this Act:

Provided that the Central Government may, by notification E in the Official Gazette, specify different competent authorities for the purpose of Sections 20-C, 20-D and 20-E;

(dc) “construction” means any erection of a structure or a building, F including any addition or extension thereto either vertically or horizontally, but does not include any re-construction, repair and renovation of an existing structure or building, or, construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences, or, the construction and maintenance of works meant for providing supply of water for public, or, the construction or maintenance, extension, management for supply and distribution of electricity to the public or provision for similar facilities for public;” G

31. Section 20A of the said Act reads thus:

“PROHIBITED AND REGULATED AREAS

20A. Declaration of prohibited area and carrying out public work or other works in prohibited area.—Every area, beginning H

- A at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument:
- B Provided that the Central Government may, on the recommendation of the Authority, by notification in the Official Gazette, specify an area more than one hundred metres to be prohibited area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A.
- C (2) Save as otherwise provided in Section 20-C, no person, other than an archaeological officer, shall carry out any construction in any prohibited area.
 - (3) In a case where the Central Government or the Director-General, as the case may be, is satisfied that—
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 - (a) it is necessary or expedient for carrying out such public work or any project essential to the public; or
 - (b) such other work or project, in its opinion, shall not have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding.
- E It or he may, notwithstanding anything contained in subsection (2), in exceptional cases and having regard to the public interest, by order and for reasons to be recorded in writing, permit, such public work or project essential to the public or other constructions, to be carried out in a prohibited area:
- F Provided that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a prohibited area in respect of such protected monument, shall be deemed to be the prohibited area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted by
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the Central Government or the Director-General, as the case may be, for the construction within the prohibited area on the basis of the recommendation of the Expert Advisory Committee, shall be deemed to have been validly granted in accordance with the provisions of this Act, as if this section had been in force at all material times:

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Provided further that nothing contained in the first proviso shall apply to any permission granted, subsequent to the completion of construction or re-construction of any building or structure in any prohibited area in pursuance of the notification of the Government of India in the Department of Culture (Archaeological Survey of India) Number S.O. 1764, dated the 16th June, 1992 issued under Rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, or, without having obtained the recommendations of the Committee constituted in pursuance of the order of the Government of India Number 24/22/2006-M, dated the 20th July, 2006 (subsequently referred to as the Expert Advisory Committee in orders dated the 27th August, 2008 and the 5th May, 2009).]

(4) No permission, referred to in sub-section (3), including carrying out any public work or project essential to the public or other constructions, shall be granted in any prohibited area on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the assent of the President.”

32. Sections 20C and 20D of the said Act read thus:

20C. Application for repair or renovation in prohibited area, or construction or re-construction or repair or renovation in regulated area.—(1) Any person, who owns any building or structure, which existed in a prohibited area before the 16th day of June, 1992, or, which had been subsequently constructed with the approval of the Director-General and desires to carry out any repair or renovation of such building or structure, may make an application to the competent authority for carrying out such repair or renovation, as the case may be.

- A (2) Any person, who owns or possesses any building or structure or land in any regulated area, and desires to carry out any construction or re-construction or repair or renovation of such building or structure on such land, as the case may be, may make an application to the competent authority for carrying out construction or re-construction or repair or renovation, as the case may be.
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GRANT OF PERMISSION BY COMPETENT AUTHORITY

- 20D. Grant of permission by competent authority within regulated area.**—(1) Every application for grant of permission under Section 20-C of this Act shall be made to the competent authority in such manner as may be prescribed.
 - (2) The competent authority shall, within fifteen days of the receipt of the application, forward the same to the Authority to consider and intimate impact of such construction (including the impact of large-scale development project, public project and project essential to the public) having regard to the heritage bye-laws relating to the concerned protected monument or protected area, as the case may be:
 - (3) The Authority shall, within two months from the date of receipt of application under sub-section (2), intimate to the competent authority impact of such construction (including the impact of large-scale development project, public project and project essential to the public).
 - (4) The competent authority shall, within one month of the receipt of intimation from the Authority under sub-section (3), either grant permission or refuse the same as so recommended by the Authority.
 - (5) The recommendations of the Authority shall be final.
 - (6) In case the competent authority refuses to grant permission under this section, it shall, by order in writing, after
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giving an opportunity to the concerned person, intimate such refusal within three months from the date of receipt of the application to the applicant, the Central Government and the Authority.

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(7) If the competent authority, after grant of the permission under sub-section (4) and during the carrying out of the repair or renovation work or re-construction of building or construction referred to in that sub-section, is of the opinion (on the basis of material in his possession or otherwise) that such repair or renovation work or re-construction of building or construction is likely to have an adverse impact on the preservation, safety, security or access to the monument considerably, it may refer the same to the Authority for its recommendations and if so recommended, withdraw the permission granted under sub-section (4) if so required:

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Provided that the competent authority may, in exceptional cases, with the approval of the Authority grant permission to the applicant referred to in sub-section (2) of Section 20-C until the heritage by-laws have been prepared under sub-section (1) of Section 20-E and published under sub-section (7) of that section.

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(8) The Central Government, or the Director-General, as the case may be, shall exhibit, on their website, all the permissions granted or refused under this Act.”

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33. It could thus be seen that the “authority” has been defined under Section 2(da) of the said Act to be a “National Monuments Authority” constituted under Section 20F of the said Act.

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34. As per Section 2(db) of the said Act, the “competent authority” means an officer not below the rank of Director of archaeology or Commissioner of archaeology of the Central or State Government or equivalent rank, specified, by notification in the Official Gazette, as the competent authority by the Central Government to perform functions under the said Act.

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35. Undisputedly, the Director, Culture, Department of Tourism and Culture (Culture), Government of Orissa, vide notification issued by the Government of India dated 13th February 2012, has been notified to

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- A be “competent authority” for the State of Orissa for the purposes of Sections 20C and 20D of the said Act.

36. Clause (dc) of Section 2 of the said Act would be the most important one. The definition of “construction” specifically excludes the following:

- B (i) Re-construction, repair and renovation of an existing structure or building;
- (ii) Construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences;
- C (iii) Construction and maintenance of works meant for providing supply of water for public; and
- (iv) Construction or maintenance, extension, management for supply and distribution of electricity to the public or provision for similar facilities for public.
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37. No doubt that the learned counsel for the appellant is right in relying on sub-section (4) of Section 20A of the said Act which prohibits any permission including the one for carrying out any public work or project essential to the public or other constructions in any prohibited

- E area referred to in sub-section (3) thereof on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the assent of the President. The same was brought into the statute book by Act No. 10 of 2010.

- F 38. It is further to be noted that by the very same amendment, Section 20C of the said Act has also been brought into the statute book. Sub-section (1) of Section 20C of the said Act provides that any person, who owns any building or structure, which existed in a prohibited area before 16th June, 1992, or, which had been subsequently constructed

- G with the approval of the Director-General and desires to carry out any repair or renovation of such building or structure, may make an application to the competent authority for carrying out such repair or renovation, as the case may be. Likewise, sub-section (2) of Section 20C of the said Act enables a person, who owns or possesses any building or structure or land in any regulated area, and desires to carry out any construction

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or re-construction or repair or renovation of such building or structure on such land, as the case may be, to make an application to the competent authority for carrying out construction or re-construction or repair or renovation, as the case may be.

39. Section 20D of the said Act deals with grant of permission by competent authority within regulated area. Sub-section (1) of Section 20D of the said Act provides that an application for grant of permission under Section 20C of the said Act, shall be made to the competent authority. Sub-section (2) thereof requires the competent authority to forward the same to the authority to consider and intimate impact of such construction having regard to the heritage bye-laws relating to the concerned protected monument or protected area. Under proviso to sub-section (2) thereof, the Central Government is empowered to prescribe the category of applications in respect of which the permission will be granted under this sub-section and the applications which shall be referred to the authority for its recommendations. Under sub-section (3) thereof, the authority is required to intimate, within two months from the date of receipt of application under sub-section (2) thereof, to the competent authority, the impact of such construction etc. Under sub-section (4) thereof, the competent authority is required to either grant permission or refuse the same as so recommended by the authority within one month of the receipt of intimation from the authority under sub-section (3) thereof. Under sub-section (5) thereof, a finality is given to the recommendations of the authority.

40. It is a settled principle of law that all the provisions in the statute have to be read harmoniously. It is presumed that each and every provision has been brought by the legislature into the statute book with some purpose. A particular provision cannot be read in isolation and has to be read in context to each other. An attempt has to be made to reconcile all the provisions of the statute together, unless it is impossible.

41. At first blush, the arguments of the appellants on the basis of sub-section (4) of Section 20A of the said Act may appear to be attractive. But when sub-section (4) of Section 20A of the said Act is read in harmony with clause (dc) of Section 2 and the provisions of Sections 20C and 20D of the said Act, we find that the submission that no construction at all can be made in the prohibited area or the regulated area, would be unsustainable.

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- A 42. Firstly, it is to be noted that clause (dc) of Section 2 of the said Act itself excludes four categories as mentioned hereinabove from the definition of “construction”. The legislative intent is thus clear that the four categories which are excluded from the definition of “construction” as defined in clause (dc) of Section 2 of the said Act would not be treated as a “construction”, wherever the said term is referred to in the statute. The legislative intent is clear that the re-construction, repair, renovation of the existing buildings has been excluded from the definition. Similarly, the construction, maintenance etc. of drains, drainage works, public latrines and urinals; the construction and maintenance of works meant for providing supply of water to public; and construction etc. for distribution of electricity, which could be construed to be essential services for catering to the needs of the public at large, have consciously been kept out of the definition of “construction”. It could be presumed that the legislature was aware that repairs and reconstruction of existing structures or buildings or construction of essential facilities like public latrines, urinals, water supply and electricity distribution for the pilgrims/ residents are basic necessities and as such, should be permitted even in the prohibited area. If it is not so interpreted, then Section 20C of the said Act would be rendered otiose and redundant. It need not be emphasized that an interpretation which leads a particular provision to be otiose or redundant or meaningless, has to be avoided.
- E 43. It could further be seen that the said position is also clarified in the affidavit filed by the Superintending Archaeologist, ASI before the High Court, which reads thus:
- “E. While the works, such as toilets, drains, electrical works, etc., do not fall within the definition of “construction”, and therefore can be carried out even in the prohibited area. Some other works, such as the reception center, fall squarely with the definition of “construction”, and being in the prohibited area, is not permitted.”
- G 44. Section 20D of the said Act deals with the entire procedure regarding grant of permission by the competent authority within regulated area. Undisputedly, in the present case, the competent authority has complied with the procedure as required under Section 20D of the said Act and the authority, i.e., the NMA has granted its permission for the work, which is undertaken. It will be appropriate to refer to the relevant part of the order dated 4th September 2021, passed by the NMA, which reads thus:

“2. After examination of the case, it is stated that the Authority has “No Objection” under assurance of strict compliance of AMASR, Act, 1958. Section 2 (de), to the execution of the following works in the prohibited area namely Cloak Room, Mini Cloak Room, Shelter pavilion. Female Toilet, Male Toilet, Sevayat Toilet, Electrical Room, and Pavement area, including a place to stand in queue for toilets and reaching sanctum sanctorum that are permitted under the exception clause to the definition of “Construction” as given in the above mentioned section. In respect of the other proposed construction works in the prohibited-area-namely Reception Centre, Information cum Donation Kiosk, First Aid Centre, Police Service Centre and ATM. Kiosk, it is requested that details with regard to the facilities for the public which are sought to be provided through these structures to justify their location in the prohibited area or may be re-located in the Regulated area. Further, it may clearly be established with relevant details that the scale of repair/renovation proposed to be carried out in Bada Chhata Matha and Chhauni Matha does not tantamount to addition/alteration or reconstruction.”

45. Insofar as the objections in the report of the ASI is concerned, it will be relevant to refer to the note signed by the Director General of ASI dated 21st February 2022, which reads thus:

“1. Shree Jagannath Temple, Puri

I visited the Shree Kshetra Shree Jagannath Temple, a centrally protected monument and the proposed area of work. The concept plan of the State Government aims to provide amenities and beautify the entire environs of the temple. The proposed amenities fall within the prohibited area of the temple. Since these amenities are required for the devotees, it was agreed that this may be allowed. ASI would work in coordination with the State Government on the design so that there is no visual impact on the main temple. State Government was also requested to keep the entire design simple in tandem with the spiritual nature of the entire temple complex.

One point of discussion was the proposed Reception centre which is at a distance of 75 metres from the temple (part falls under the prohibited area). This building is proposed to be used to

- A hold devotees before they proceed to the main complex. Given that this would be very essential, it was decided that the State Government would consider options to slightly move the building beyond 100 metres; this would also be good in the interest of security of the temple.”
- B 46. It could thus clearly be seen that the Director-General has observed that the amenities which fall within the prohibited area of the temple are required for the devotees, and therefore, it was agreed that this may be allowed. It was further observed that the ASI would work in coordination with the State Government on the design so that there is no visual impact on the main temple. The State Government was also requested to keep the entire design simple in tandem with the spiritual nature of the entire temple complex.
- C 47. In the impugned order, even the Division Bench of the High Court has recorded the statement of the learned Advocate General to the effect that both ASI and the State Government would work together.
- D Insofar the reception area is concerned, the impugned order would also reveal that the learned Advocate General has clarified that it will now be moved out of the prohibited area and it will be constructed in the regulated area.
- E 48. It will further be relevant to refer to the following extract of the note of the Director-General of ASI, which reads thus:
- F “The potential of both Puri and Ekamrakshetra to be taken up for World/ Heritage was also discussed. A brief overview of the World Heritage guidelines especially relating to management of buffer zone and the Outstanding Universal value of both temples was shared with them. It was agreed that all work in both places would be designed and executed, keeping in mind the possibility of becoming World Heritage Sites, going forward. The State Government was also requested to remove all encroachments from VaitalDeul and Paramaguru temple which is one of the oldest temple of Kalingan Architecture. The issue of shifting of the kitchen of Anantabasudev temple to another suitable location was also discussed.”
- G 49. It could thus clearly be seen that even the Director-General of ASI has recognized the potential of Puri and Ekamrakshetra for being taken up as World Heritage sites. It was agreed that all the work
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in both the places would be designed and executed keeping in mind the possibility of developing them for being acknowledged as World Heritage Sites.

50. The affidavit of the Superintending Archaeologist, ASI to which we have already referred to hereinabove, would also reveal that there does not appear to be any serious objection with regard to construction of works such as toilets, drains and electrical works in the prohibited area. There also does not appear to be any serious objection with regard to undertaking construction in the regulated area. The insistence is that the construction has to be carried out after necessary permissions are obtained from the NMA under the provisions of the said Act. Another concern appears to be that the entire design or the facilities should be simple, in tandem with the spiritual nature, design and aesthetic of the entire temple complex.

51. Taking into consideration all these aspects of the matter, it is amply clear that the construction activities which are being undertaken, are being undertaken in pursuance of the directions issued by a three-Judge Bench of this Court in the case of *Mrinalini Padhi* (supra). The construction is being carried out for the purpose of providing basic and essential amenities like toilets for men and women, cloak rooms, electricity rooms etc. These are the basic facilities which are necessary for the convenience of the devotees at large. As already discussed hereinabove, the legislative intent appears to be clear. The legislature has deliberately excluded four categories from the definition of "construction". The purpose behind it appears to be that the repairs and renovation of the buildings, which are existing and the constructions which are necessary for providing basic facilities like drainage, toilets, water supply and distribution of electricity should be kept out of the rigour of requirement of statutory permissions.

52. An argument was sought to be advanced by Shri Navare that the said provision is only to enable a person who resides in the prohibited area to get his existing structure re-constructed, repaired and renovated and the said provision cannot come to the aid of the State to create facilities for the public. Such an argument is taken note of only to be rejected. If an individual person can construct a toilet in a prohibited area; can the State be denied to do so, when the State finds it necessary to do it in the larger public interest for providing basic facilities to the lakhs of devotees visiting the shrine? The answer is an emphatic 'no'.

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- A 53. A hue and cry was made that the construction carried out is contrary to the Inspection Report carried out by the ASI. However, the note of the Director General of ASI dated 21st February, 2022 as well as the affidavit filed by the ASI before the High Court would falsify this position.
- B 54. It would further be relevant to note that the High Court itself has recorded the statement of the learned Advocate General for State of Odisha that both the ASI and the State Government would work together to ensure that no archaeological remains are missed out or damaged.
- C 55. It could thus be seen that even if the appellants had any genuine concern, the same is already taken care of in the impugned order.
- D 56. In spite of that, the matter was mentioned for obtaining urgent orders before the Vacation Bench on Monday, i.e., 30th May, 2022. Since the matter was not listed on Tuesday, i.e., 31st May, 2022, it was again mentioned on the said date. Again, a hue and cry was made as if heavens are going to fall if the petitions were not listed. As such, the petitions were listed on Thursday, i.e., 2nd June, 2022. We have heard the learned counsel for the parties at length.
- E 57. We have no hesitation in holding that the activities undertaken by the State are completely in tune with the directions issued by the three-Judge Bench of this Court in the case of *Mrinalini Padhi* (supra). They are necessary in the larger public interest and there is no prohibition in the statute for doing so, as sought to be argued by the appellants.
- F 58. We, therefore, find no merit in the contentions raised on behalf of the appellants. We are of the considered view that the public interest litigation filed before the High Court rather than being in public interest, is detrimental to the public interest at large.
- G 59. In the recent past, it is noticed that there is mushroom growth of public interest litigations. However, in many of such petitions, there is no public interest involved at all. The petitions are either publicity interest litigations or personal interest litigation. We highly deprecate practice of filing such frivolous petitions. They are nothing but abuse of process of law. They encroach upon a valuable judicial time which could be otherwise utilized for considering genuine issues. It is high time that such so-called public interest litigations are nipped in the bud so that the developmental activities in the larger public interest are not stalled.

60. In the result, the appeals, having been found to be without any substance, are dismissed with costs, quantified at Rs. 1,00,000/- (Rupees one lakh) each, payable by the appellants to the respondent No.1 within four weeks from the date of this judgment. A

61. Pending application(s), if any, shall stand disposed of in the above terms. B

Devika Gujral
(Assisted by : Deepak Panwar, LCRA)

Appeals dismissed.