

Rupali Dolui vs Archeological Survey Of India And Ors on 25 January, 2023

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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Signing Date:25.01.2023
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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 947/2023 and CM APPL. 3687/2023, 3688/2023

RUPALI DOLUI

..... Petitioner

Through: Ms. Mishika Singh, Mr. Prateek
Dhanda, Ms. Aanchal Tikmani, Mr.
Subham Jain & Mr Ankit Roy,
Advocates. (M: 9810187140)

versus

ARCHEOLOGICAL SURVEY OF INDIA
AND ORS

..... Respondents

Through: Mr. Jitesh Vikram Srivastava. SPC.
And Mr. Prajesh Vikram Srivastava.
G.P. for R-1 & 2. (M: 7982787017)
Mr. Akhil Mittal, Standing Counsel
for MCD with Mr. Sahib Kochhar,
Advocates.
Mr. Dhananjaya Mishra, Mr. Navneet
Dogra and Mr. Ayan Rai, Advocates
for R-3.
Ms. Monika Tripathy, Standing
Counsel for DDA.

(49) AND

+ W.P.(C) 955/2023 and CM APPL. 3696/2023, 3697/2023

RAM RAY

..... Petitioner

Through: Ms. Mishika Singh, Mr. Prateek
Dhanda, Ms. Aanchal Tikmani, Mr.
Subham Jain & Mr Ankit Roy,
Advocates.

versus

ARCHEOLOGICAL SURVEY OF INDIA
AND ORS

..... Respondents

Through: Mr. Jitesh Vikram Srivastava. SPC.
And Mr. Prajesh Vikram Srivastava.
G.P. for R-1 & 2.
Ms. Nitika Bhutani, Advocate for R-

W.P.(C) 947/2023 & 955/2023

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3.

Mr. Akhil Mittal, Standing Counsel
for MCD with Mr. Sahib Kochhar,
Advocates.

Ms. Monika Tripathy, Standing
Counsel for DDA.

CORAM:
JUSTICE PRATHIBA M. SINGH
ORDER

% 25.01.2023

1. This hearing has been done through hybrid mode.

2. The present petitions have been filed by Petitioners, who claim to be domestic workers, seeking setting aside of the impugned notification bearing form no. 160/161-202-2Z-M-3835 dated 11th January, 2023 issued by Respondent No.1- Archeological Survey of India (ASI). Vide the impugned notification, ASI has called upon all occupants of houses in the Tughlaqabad Fort area to remove all illegal construction and encroachment within fifteen days from the date of notice, failing which eviction proceedings under law would be taken.

3. It is submitted by Id. Counsel for the Petitioners that they are likely to be removed by the ASI immediately upon the expiry of 2 weeks' period, which is expiring tomorrow, i.e., on 26th January, 2023. Id. counsel for the Petitioners also relies upon the order dated 17th May, 2017 passed by the Id. Division Bench of this Court in W.P.(C) 1475/2001 titled S.N. Bhardwaj Advocate v. Archeological Survey of India by which the demarcation was to be carried out of the Tughlaqabad Fort area.

4. On behalf of ASI, it is submitted that the aerial survey has been carried out and the physical survey has been done in parts. It is only thereafter that the present action has been taken.

5. On behalf of the DDA, Id. Counsel submits that she does not have instructions as to whether the Committee constituted vide order dated 17th May, 2017, passed by the Id. Division Bench in W.P.(C) 1475/2001, has completed the demarcation exercise in terms of the said order. She accordingly seeks time to take instructions.

6. The order passed by the Supreme Court dated 4th February, 2016 in Civil Appeal No.699/2005

titled S.N. Bhardwaj v. Archeological Survey of India clearly recognizes the importance and identity of the Tughlaqabad Fort. As per the said judgment of the Supreme Court, the Fort has to be treated as a protected monument and all construction was stopped in the area of the protected monument. The Supreme Court also gave clear directions for removal of unauthorized construction as also the encroachers. The directions of the Supreme Court are as under:

"11. On the basis of events narrated above, the position that emerges in the following:

"(a) Tughlakabad Fort is a protected monument and this Court has held in these proceedings that protection and preservation of the said monument is imperative.

(b) Though stay order was granted by the High Court in the writ petition, which is now registered as Transfer Case (Civil) No. 7 of 2003, the said stay order was vacated by this Court long ago.

(c) On October 14, 2011, order was passed directing the ASI to file an affidavit indicating that on the basis of the aerial survey conducted in the year 1993, how many people were living in the protected monument of Tughlakabad Fort. This direction is yet to be complied with.

(d) Repeated orders are passed to the effect that there would not be any further construction in the protected monument, i.e. Tughlakabad Fort. The effect of the said orders is that ASI is to take an action for removal of unauthorised construction as also the encroachers from the public land.

There are even orders passed by this Court that for carrying out this direction, the ASI is to be provided with necessary police protection as well as any other cooperation that is needed from the National Capital Territory of Delhi or any other authority."

7. However, for one reason or the other, the encroachers and unauthorized construction does not abate near the Tughlaqabad Fort, as is clear from the present petitions as also the aerial survey map which has been shown by the ASI.

8. In W.P.(C) 1475/2001 referred to above, the Id. Division Bench vide order dated 17th May, 2017 formed a Committee consisting of the Vice- Chairman, DDA and other authorities including the ASI for carrying out the survey of the structures around the Fort area. The said Committee had to meet on 5th June 2017 and thereafter. This Court has no option but to notice that repeated orders of the Id. Division Bench for demarcation have been passed but there appears to be no response forthcoming from the Committee formed by the Court. No status report also appears to have been filed by DDA.

9. Be that as it may, insofar as the aerial survey, which has been handed over to Court today is concerned, it shows the location of the Petitioners' premises within the Tughlaqabad Fort. However, as per the Petitioners, who rely on Google maps, the premises is 750 metres from the Tughlaqabad

Fort.

10. Id. Counsel for the Petitioners has been queried by the Court as to whether the Petitioners have any title to the land which is occupied by them and whether the jhuggis and the other premises which are located in the area are notified as notified clusters by DUSIB / GNCTD. The answer of the Id. Counsel is clearly in the negative.

11. Under such circumstances, the Petitioner ought not to be entitled to claim any right in law to continue to occupy the area in question. The judgment of the Supreme Court ought to be given effect to and the ASI is carrying out the mandate as laid down by the Supreme Court.

12. At this stage, Id. Counsel for the Petitioners submits that the Petitioners are entitled to alternate accommodation under the Pradhan Mantri Uday Scheme, under which they have made application on 5th December, 2020.

13. After some hearing, Id. Counsel for the Petitioners submits that the matter may be listed before the Division Bench which is dealing with W.P.(C) 1475/2001 titled S.N. Bhardwaj Advocate v. Archeological Survey of India.

14. Accordingly, subject to the orders of Hon'ble the Chief Justice, list before the Division Bench on 27th January, 2023.

PRATHIBA M. SINGH, J.

JANUARY 25, 2023/dk/sk