

Supreme Court of India

S.N. Bhardwaj vs Archeological Survey Of India & ... on 4 February, 2016

Bench: T.S. Thakur, A.K. Sikri, R. Banumathi

NON – REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 699 OF 2005

S.N. BHARDWAJAPPELLANT(S)	
VERSUS		
ARCHAEOLOGICAL SURVEY OF INDIA & ORS.RESPONDENT(S)	

W I T H

TRANSFER CASE (CIVIL) NO. 7 OF 2003

J U D G M E N T

A.K. SIKRI, J.

Sultan Giyasuddin Tughlaq founded the Tughlak Dynasty and ruled during the period 1321-1325 A.D. He constructed the historic Tughlakabad Fort in Tughlakabad spreading over an area of about 3000 bighas and area-wise it is considered one of the largest among all the Forts in Delhi. Tughlakabad Fort is regarded as the third major city after Kila Rai Pithora, which was built by the Rajput Anang Pal Tomer, and the Siri Fort, which was built by Allaudin Khilji. The Fort has its national importance. It has been declared as protected monument. Therefore, it is the legal as well as ethical obligation of the concerned authorities to protect this heritage site and to properly maintain it. Notwithstanding, over a period of time, the place is encroached upon and rampant illegal construction carried out by many people.

The appellant herein felt aggrieved by the alleged inaction on the part of the Archaeological Survey of India – respondent No.1 (hereinafter referred to as 'ASI' for short) as, according to him, the ASI has failed to protect, maintain and preserve the historic Tughlakabad Fort. According to him, various illegal occupants have since entered the fort premises and constructed their houses with a view to grab the Government land for dwelling purposes. This apathy of the ASI compelled the appellant to file CWP No. 1475 of 2001 in the High Court of Delhi, by way of Public Interest Litigation, in March 2001. In this writ petition, the appellant, inter alia, stated that the Fort and the area measuring 2661 bighas within the fortification wall was transferred to the ASI by the Delhi Government with the objective of protection, preservation and development of the entire opening area abutting the monument within the Fort wall. He mentioned that it was reported in the press that an area of 4435 bighas was transferred to respondent No.2 – Delhi Development Authority for care and maintenance. The Government land was allowed to be encroached by all the respondents and construction work was carried out with the active collusion of the Government officials as per reports in the Press. The appellant also mentioned that the matter had been highlighted by the Press

to open the eyes of the authorities but the respondents were doing virtually nothing in this regard and the historic Fort is likely to be completely ruined, which will cause national loss to our ancient heritage and composite culture. The appellant brought to the notice of the High Court a judgment of this Court in *Rajeev Mankotia v. Secretary to the President of India & Ors.*, (1997) 10 SCC 441, in which case this Court intervened and saved another historical Viceregal Lodge. Accordingly, in the said writ petition, the appellant prayed that the ASI be directed to discharge its legal duty by evicting those illegal occupants. He also made a prayer to the effect that direction be issued to the Central Bureau of Investigation to conduct an inquiry as to how the Fort had been encroached upon by illegal occupants.

On the very first date, i.e. on March 07, 2001, when the said writ petition came up for hearing, the High Court disposed of the same with the observations that the ASI need to look into the grievances in proper perspective and take necessary action as is warranted in law. This brief order reads as under:

“CWP No. 1475/2001 Heard. This petition is stated to have been filed in Public interest. Though the petition is not very specific as regards the alleged un-authorised construction we think it would be appropriate if the concerned authorities look into the grievances in the proper perspective and take necessary action as is warranted in law. We make it clear that we have not expressed any opinion as regards acceptability of the petitioner's stand. This direction is confined to Respondent No.1 i.e. Archaeological Survey of India. Petitioner shall hand over a copy of the petition to Mr. U. Hazarika, appearing for ASI. Copy of the order be given Dasti to Mr. Hazarika.

The petition stands disposed of.” Not satisfied with the aforesaid manner of disposal of the writ petition, the appellant approached this Court by way of special leave petition. According to the appellant, having regard to the significant observations made and directions issued in *Rajeev Mankotia* (supra), the High Court should have taken up the matter itself rather than leaving it to the ASI. He specifically referred to the following observations made in *Rajeev Mankotia* (supra):

“19. It is needless to mention that as soon as the Indian Institute of Advanced Studies vacates the building and hands it over to the Archaeological Department, the Government should provide the necessary budget for effecting repairs and restoring to the building its natural beauty and grandeur. It is also necessary that its proper maintenance and preservation is undertaken as an on-going process to protect the historical heritage and needed repairs are effected from time to time. We avail this opportunity to direct the Government of India to maintain all national monuments under the respective Acts referred to above and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour workmanship, craftsmanship and the skills of the Indian architects, artists and masons is continued to be preserved. They are the pride of Indians and places of public visit. The tourist visitors should be properly regulated and collection of funds by way of admission/entrance fee should be conscientiously accounted for and utilised for their upkeep and maintenance under the respective regulations/ rules. Adequate annual budgetary provisions should be provided. In this behalf, it may not be out of place to mention that if one goes to Williamsburg in United States of America, the first settlement of the Britishers therein is preserved as a tourist resort

and though it is one in the row, its originality is maintained and busying (sic. bustling) business activity goes on in and around the area attracting daily hundreds of tourists from all over the world. Similar places of interest, though of recent origin, need to be preserved and maintained as manifestation of our cultural heritage or historical evidence. Similar efforts should also be made by the Government of India, in particular the Tourism Department, to attract foreign tourists and to give them a good account of our past and glory of the people of India as message to the other countries and territories. Equally all the State Governments would do well vis-a-vis monuments of State importance, though given power under Entry 12, List II of the Seventh Schedule to the Constitution. From this perspective, the petitioner has served a great cause of national importance and we place on record his effort to have the Viceregal Lodge preserved and maintained; but for his painstaking efforts, it would have been desecrated into a five star hotel and in no time "We, the people of India" would have lost our ancient historical heritage."

Notice was issued in this Special Leave Petition and the respondents, including the ASI, appeared in the matter. After notice, when the matter came up for hearing on December 09, 2002, this Court was informed that the alleged encroachment could not be removed even when the authorities were trying to do the same on account of certain interim orders passed by the High Court of Delhi in Writ Petition (Civil) No. 2193 of 2001. This Court directed the production of records of the said writ petition before it. The said petition was transferred to this Court and is registered as Transfer Case (Civil) No. 7 of 2003. Thereafter, both the cases were taken up for hearing together. On March 03, 2003, this Court passed interim orders directing that no construction, of any nature whatsoever, is allowed to be undertaken in this area by anybody. It was also directed that all the agencies, including National Capital Territory of Delhi, Delhi Development Authority, Municipal Corporation of Delhi and the Police must assist the ASI in ensuring that no construction activity takes place in this area. Thereafter, leave was granted on January 25, 2005; interim order was directed to continue; hearing of the matter was expedited and original records requisitioned. We may also point out that many persons, who are residents in the said area and are dubbed as unauthorised encroachers by the appellant herein, had moved applications for intervention from time to time, which were allowed.

Effective hearing in the matters took place on September 08, 2011, when the following order was passed:

"T.C. (C) No. 7/2003:

We have heard the learned counsel for the parties and perused the relevant documents on record. In the facts and circumstances of this case, the orders dated 9.4.2001 and 24.4.2001 ought not to have been passed by the High Court. Learned counsel appearing for the Delhi Development Authority and learned counsel appearing for the Archaeological Survey of India submit that because of this stay order, huge chunk of land at Village Tughlakabad has been unauthorisedly encroached upon. These orders are, therefore, vacated. Consequently, the order passed by this Court on 3.3.2003 in S.L.P. (C) No. 4821 of 2002, on the basis of the Delhi High Court order, is also vacated.

In view of the fact that now there is no stay order of this Court, the concerned authorities are directed to take appropriate steps in accordance with law and inform this Court within eight weeks

from today.

List the matter on 29th November, 2011.” As is clear from the aforesaid order, the stay granted by the High Court in Writ Petition (Civil) No. 2193 of 2001, which was transferred to this Court and registered as Transfer Case (Civil) No. 7 of 2003, stood vacated thereby making it clear that there was no stay order and direction was given to the authorities to take appropriate steps, in accordance with law. This was followed by the order dated October 14, 2011 when the Court directed 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. We would like to reproduce this order as well in its entirety. The same is as under:

“We have heard the learned counsel for the parties.

We would like to reiterate that protection and preservation of the monument of Tughlakabad Fort is imperative.

Learned counsel appearing for the Archaeological Survey of India is directed to file an affidavit indicating that on the basis of the aerial survey conducted in 1993, how many people were living in the protected monument of Tughlakabad Fort. Let the affidavit be filed within three weeks from today with an advance copy to the appellant-in-person and the counsel for other parties.

The respondent Archaeological Survey of India and other public authorities would be at liberty to visit the protected monument and, if necessary, police protection may be provided to them by the concerned authorities.

Meanwhile, there shall be no further construction in the protected monument of Tughlakabad Fort.

List this application along with the civil appeal on the date fixed.” As the ASI failed to file this affidavit within the aforesaid time granted by this Court, vide order dated May 03, 2012, last opportunity was granted to the ASI to file an affidavit within one week from the said date, failing which the Director General of ASI was directed to be personally present in the Court. Notwithstanding this order, the ASI failed to do the needful and the explanation furnished by it was that the task involved had very wide dimensions and in spite of best efforts, the ASI was not able to file the affidavit within the time granted. This argument was rejected in the order passed by this Court, after hearing the matter on July 11, 2012, recording its displeasure. Cost of ₹10,000 was imposed on the ASI while granting two weeks further time to comply with the directions given earlier. This strongly worded order resulted in the compliance by the ASI to the limited extent, viz. it filed the affidavit at least. However, in the said affidavit, the ASI expressed its inability to carry out the direction stating that unrest was prevailing at the site, which prevented it from carrying out a joint survey to identify the area by physical verification. Taking note of this plea made in paragraphs 46 and 47 of the affidavit of the ASI, vide order dated April 10, 2013, Chief Secretary of the National Capital Territory of Delhi and Commissioner of Police, Delhi were directed to provide all assistance sought by the ASI for carrying out the directions of this Court.

Certain Status Reports were filed by the ASI thereafter, but in all these reports it has reflected that the ASI had not been able to carry out the survey for the reasons beyond its control. This prompted the appellant even to file Contempt Petition (Civil) No. 382 of 2014, in which Notice was issued and reply filed by the respondents/ alleged contemnors. The said contempt petition was disposed of on March 19, 2015 in the following terms: “1. This Contempt Petition is filed under Section 14 of the Contempt of Court Act, 1971 with a prayer to initiate appropriate contempt proceedings against the respondent no.1 for willfully disobeying the order(s) passed by this Court in Civil Appeal No. 699 of 2005, dated 03.05.2012, 11.07.2012 and 10.04.2013.

2. We have carefully perused the counter affidavit/ reply filed by the respondent(s). In its counter affidavit/reply the respondents have specifically stated that they are taking active steps to implement the order(s) and direction(s) issued by this Court.

3. In a matter of this nature, we do not think that the respondents have committed any contempt of the order(s) and direction(s) issued by this Court. Therefore, we drop the contempt proceedings against the respondents.

4. However, we direct the respondents to file the latest Status Report(s) within four weeks' time from today indicating therein the efforts being taken by the respondents to implement the order(s) and direction(s) issued by this Court.

5. The Contempt Petition is disposed of accordingly.

Ordered accordingly.” The state of affairs reflected above continues even now. The stock reply of the ASI is that it has not been able to complete the survey as it is not getting police protection. In this backdrop, we have heard the matter.

On the basis of events narrated above, the position that emerges is 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.

Since effective orders have already been passed to this effect and the matter now only needs to be monitored to ensure that these orders are implemented in letter and spirit by taking effective steps and action in the matter, we are of the opinion that further monitoring of the cases can be done by the High Court of Delhi from where these proceedings originated.

We, accordingly, remit these cases to the High Court, which may pass appropriate orders and ensure that the orders passed by this Court, as referred to above, are duly implemented by the respondent authorities. The Registry is directed to transmit the records of the cases to the High Court.

With the aforesaid observations, the Civil Appeal and the Transfer Case stand disposed of.

.....CJI.

(T.S. THAKUR)J.

(A.K. SIKRI)J.

(R. BANUMATI) NEW DELHI;

FEBRUARY 04, 2016.