

ITEM NO.5

COURT NO.14

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 12213/2019

[Arising out of impugned final judgment and order dated 20-02-2019 in WPC No. 4099/2018 passed by the High Court of Delhi at New Delhi]

RAJEEV SURI

Petitioner(s)

VERSUS

ARCHAEOLOGICAL SURVEY OF INDIA & ORS.

Respondent(s)

(IA No. 78852/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 12-11-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Mr. Shikhil Shiv Suri, Sr. Adv.
Mrs. Madhu Suri, Adv.
Ms. Jyoti Suri, Adv.
Ms. Wamika Chadha, Adv.
Mr. Vibhor Choudhary, Adv.
Ms. Ishita Ahuja, Adv.
Mr. Saurabh Jha, Adv.
Mr. T. R. B. Sivakumar, AOR

For Respondent(s) Mr. S.D. Sanjay, A.S.G.
Mr. Aranya Sahay, Adv.
Mr. Siddhant Kohli, Adv.
Mr. Raman Yadav, Adv.
Mr. Chitvan Singhal, Adv.
Mr. Amrish Kumar, AOR

Ms. Aishwarya Bhati, A.S.G.
Mr. Udai Khanna, Adv.
Mr. Kanu Agrawal, Adv.
Ms. Shivika Mehra, Adv.
Ms. Sunita Sharma, Adv.
Mr. B. L. N. Shivani, Adv.
Ms. Satvika Thakur, Adv.
Mr. Shreekant Neelappa Terdal, AOR

Mr. Rakesh Sinha, Adv.
Mr. Arvind Gupta, AOR

Mr. Md Ghulam Akbar, Adv.
Mr. Jeemon Raju K, Adv.
Ms. Shruti Shashi, Adv.
Mr. Sushant Shekhar, Adv.

Mr. Shubhranshu Padhi, AOR
Mr. D Girish Kumar, Adv.
Mr. Jay Nirupam, Adv.
Mr. Pranav Giri, Adv.
Mr. Ekansh Sisodia, Adv.
Ms. A. M. Harsavardhini, Adv.

Mr. Rajkumar Bhaskar Thakare, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Prasenjeet Mohapatra, Adv.
Mr. Sanjay Kumar Tyagi, Adv.
Ms. Neelakshi Bhadauria, Adv.

UPON hearing the counsel the Court made the following
O R D E R

This petition was filed challenging the order of the Delhi High Court dated 20.02.2019, which had dismissed the petitioner's writ petition. The core of the dispute is regarding a medieval period monument called '*Gumti of Shaikh Ali*', which is situated in Defence Colony, New Delhi and from where, admittedly, the office of Defence Colony Welfare Association (in short, 'DCWA') is presently operates.

The petitioner has sought the following prayers from this Court :-

"(a) That... this Hon'ble Court may be pleased to grant special leave to appeal against the judgment and order dated 20.02.2019 passed by the Hon'ble High Court of Delhi at New Delhi in Writ Petition No. 4099/2018.

(b) Such other or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

We have heard learned counsel appearing for the parties, including the counsel appearing for Archeological Survey of India [in short, 'ASI'] and other relevant parties. On 27.08.2024, the following order was passed by this Court :-

"Heard the petitioner in-person and learned counsel for the parties.

IA No.78852/2019

2. Exemption from filing Certified Copy of the Impugned Judgment is granted; IA No.78852/2019 is allowed.

SLP (C) No.12213/2019

3. The Petitioner had moved the Delhi High Court (hereinafter referred to as the 'High Court') by way of a writ petition under Article 226 of the Constitution of India (hereinafter referred to as the 'Constitution') for, in essence, the protection of a Gumti, which he contends, is a monument situated in Defence Colony, New Delhi under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as the 'Act'). The petition viz. Writ Petition (Civil) No.4099/2018 was dismissed by a Division Bench of the High Court on 20.02.2019. Aggrieved, the Petitioner

has approached this Court under Article 136 of the Constitution.

4. The brief facts are that on 09.02.2004, vide Gazette Notification S.O.183(E), Respondent No.2/ Central Government (Union of India) gave notice of its intention under Section 4(1) of the Act to declare the Gumti to be of national importance. Objections to such declaration were sought within a period of 2 months. On 07.04.2004, Respondent No.4/Defence Colony Welfare Association (hereinafter referred to as 'DCWA') objected to the proposal, which was forwarded to the Director General, Archaeological Survey of India (hereinafter referred to as 'ASI') by the Superintending Archaeologist, ASI, Delhi Circle (hereinafter referred to as the 'Superintending Archaeologist') on 21.04.2004. On 15.05.2004, the Director General's office sought the Superintending Archaeologist's comments on the DCWA's objections.

5. On 29.06.2004, the Superintending Archaeologist reverted to the Director General, ASI. The comments offered by the Superintending Archaeologist lead nowhere - 2 points from the DCWA's objections are noted and it is stated that the Gumti has been in

the DCWA's occupation and additions/alterations have been made over time, which may be considered before issuing the confirmatory notification under the Act. Thereafter begins a long chain of correspondence intra-ASI, which we have perused. Sometime, in the year 2008, as noted in the Impugned Judgment, the Central Government decided that the Gumti could not be declared as a monument of national importance as major additions/alterations had been made by the DCWA who had been using it as its office leading to the Gumti losing its originality.

6. We are surprised at the turn of events. In the year 2004, the competent body to recommend declaration of a structure as a monument of national importance viz. ASI favoured so doing, based on the Superintending Archaeologist's comments supra, but later the ASI reports that as alterations had been made by the DCWA while occupying the structure, the Gumti had lost its originality. From the note accompanying the letter dated 15.02.2008 addressed to the Superintending Archaeologist by the Director (Monuments), it emerges that the Secretary, Culture had already previously

noted" It however not be feasible for the ASI to protect it as a centrally protected monument." (sic) This creates doubt on the bonafides of the ASI as also the Central Government, insofar as proper processing of the original proposal is concerned.

7. Be that as it may, we deem it fit that the Central Bureau of Investigation (hereinafter referred to as the 'CBI') be entrusted to initiate a Preliminary Enquiry on the following aspects:

(i) How and under what circumstances the Gumti came to be occupied by the DCWA, as claimed, from "1963-64"?

(ii) How and under what circumstances, when the Central Government and ASI had initially recommended that the Gumti be declared a protected monument, only on the purported basis of alterations/additions having been made by the DCWA and the sole objection submitted by it, both ASI and the Central Government changed their stands?

(iii) How and under what circumstances and on whose authority were

additions/alterations made to the Gumti?

(iv) Why appropriate steps were not taken and by which officer/authority to prevent additions/alterations in the Gumti?

8. We implead the CBI through its Director as Respondent No.6.Memo of Parties be amended by the Registry, which shall forthwith communicate this Order to the CBI.

9.The CBI shall also consider the views of the Petitioner in the Preliminary Enquiry. Let the CBI file a report on theoutcome/progress of the afore-directed exercise within 2 months from today. Needless to state, if in the interregnum, the official respondents concerned so desire, they will be at liberty to take steps to protect the Gumti, in accordance with law. However, in terms of Order dated 12.03.2024, no change in any manner whatsoever in the Gumti shall be made by any person/body till further orders. Any deviation in this regard shall entail serious consequences.

10. List the matter high on Board on 12th November, 2024."

Pursuant to the above order, the Central Bureau of Investigation [in short, 'CBI'] has made a preliminary inquiry into the matter and has submitted a Report, which discloses a lot about the action or inaction on the part of ASI as well as about DCWA, amongst other parties. Para 6.10 of the Report is reproduced hereunder :-

"Therefore, enquiry has revealed that the change in stand in relation to protection of the Gumti of Shaikh Ali was due to the objection raised by the Defence Colony Welfare Association. There is no specific provision under the AMASR Act, 1958 which states that if there is any addition/alteration in any monument, the same will not be considered for protection as a Centrally Protected monument by ASI. However, Shri Zulfeqar Ali, Director Monument, ASI and Sh. Praveen Singh, Superintending Archaeologist, Delhi Circle, ASI have stated that the purpose of the ASI is to protect the ancient monuments for posterity in their original form. In general, if a monument is altered by the way of modern additions, interventions and

modifications then generally it is not considered for the Centrally Protected monument by ASI Department."

The Report goes on to a finding as to how and under what circumstances and under whose authority additions and alterations have been made in the Gumti. In this regard, Para 7 of the Report is reproduced below :-

"How and under what circumstances and on whose authority were additions/alterations made to the "Gumti"?"

7.1 Enquiry disclosed that the Defence Colony Welfare Association which has been using the subject Gumti as its Office for approximately the last sixty years, has carried out addition/alterations during the time of their unauthorized occupation.

7.2 The following additions/alterations have been made in the Gumti by DCWA :

- Electricity connection was taken in the name of DCWA. Electricity meter and Key Board box for electricity have been fitted on wall of Gumti.*
- MTNL connection was installed in the Gumti in the name of DCWA.*
- Existing openings in the Gumti were converted into lockable windows and doors.*

Two openings have been converted into windows. Five openings have been closed. One opening has been converted into a lockable glass door.

- Fall ceiling was added and flooring of Gumti has been tiled.*
- Three wooden cabinets, one safe deposit locker and two name boards have been fitted on wall.*
- One drinking water dispenser has been fitted on the wall.*
- Adjoining the Gumti, a washroom has been constructed.*
- A shed for parking of vehicles has been constructed outside the Gumti."*

The Report further indicates as under :-

"7.3 L&DO, Ministry of Housing and Urban Affairs, Govt. of India informed that they have never allotted this Gumti of Shaikh Ali to any persons/any organisation and that the Gumti of Shaikh Ali is under the unauthorized occupation of Defence Colony Welfare Association, New Delhi. They further informed that neither have they allotted the said Gumti nor any request letter has ever been received from any

organisation or anyone to make alteration in "Gumti" of Shaikh Ali.

7.4 That vide letter dated 22/04/2024 of Sh. Neeraj Bakshi, Deputy L&DO addressed to Honorary General Secretary, Defence Colony Welfare Association, it was informed that the DCWA was having unauthorized occupation of Gumti and L&DO has decided to take over the possession of the Gumti on 30/04/2024. Further, the letter also communicated that any fixture and valuable items from the premises of the Gumti should be removed.

7.5 That in response to the aforesaid letter, Lt. Col. Inderjit Singh Lamba, Honorary General Secretary, Defence Colony Welfare Association vide letters dated 26.04.2024 and 29.04.2024 wrote that since, the Hon'ble Supreme Court of India vide order dated 12.03.2024 passed the status quo order "in the meantime, no change whatsoever, in any manner shall be made regarding the subject matter of property. SLP No. 12213/2019 titled as Rajeev Suri Vs. Archaeological Survey of India, the letter dated 22.04.2024 of L&DO may be withdrawn and action in the Gumti

case should be taken only after final decision by the Hon'ble Court.

7.6 Therefore, enquiry has revealed that the additions/alterations were made by DCWA in the Gumti without any authorization/ permission from L&DO.

8. Why appropriate steps were not taken and by which officer/authority to prevent additions/alterations in the "Gumti"?

8.1 During the enquiry it has emerged that the ownership of the Gumti of Shaikh Aloji situated at Defence Colony, New Delhi is with Land & Development Office (L&DO), Ministry of Housing & Urban Affairs. Therefore, the L&DO Department and its officers from 1963 had to take appropriate steps to prevent encroachment of the Gumti. However, DCWA had unauthorizedly occupied the Gumti around 1963 i.e. about 60 years ago and no action was taken by L&DO till 22.04.2024 in respect of the same.

8.2 The details regarding the officers responsible for preventing encroachment upon Gumti of Shaikh Ali by DCWA have been

sought from L&DO and the reply is still awaited.

9. On the basis of the outcome of preliminary enquiry conducted so far, it can be concluded that "Gumti of Shaikh Ali" belongs to L&DO Department, Ministry of Housing & Urban Affairs and was unauthorisedly occupied and altered by DCWA, without any permission from L&DO. The names of the officers of L&DO responsible for the same has been sought from the Department and reply is awaited. Enquiry has revealed that the change in stand in relation to declaration of the Gumti of Shaikh Ali as a Centrally Protected monument by ASI Department was due to the objections raised by the Defence Colony Welfare Association including additions/alterations carried out by DCWA in the Gumti. Though there is no specific provision under the AMASR Act, 1958, it has been stated by ASI that only the ancient monuments in their original form are protected by ASI and if a monument is altered by the way of modern additions, interventions and modifications then it is not considered for protection

by ASI as it has lost the archeological value."

Of course, the CBI is not an expert body on the archeological and historical work of a document, but they have done a excellent work in bringing before this Court the sequence of events, which have led to the neglect of the monument and, the total unauthorized occupation of a building of archeological importance. To what extent, the building can be restored and what is the damage which has already been caused to the building, can only be done by an expert. In order to ascertain this aspect, we appoint Ms Swapna Liddle, who is ex-convener of (INTACH) (Delhi Chapter of Indian National Trust for Art and Cultural Heritage) and has authored several books on contemporary and post medieval and modern history of Delhi. We request Ms Swapna Liddle to survey and inspect the building and ascertain the damage which has been caused and to what extent the building can be restored, and in what manner it can be done. We would appreciate if the report is filed within six weeks from today.

We further observe that although the Report of CBI is not complete and the CBI, in its Report, has further stated that they will be finalizing the preliminary Report by 30.11.2024, but that should not detain us here. The present Report be given to all the parties before us, and let further inquiry of CBI be also completed, so that we do not lose time.

Let a copy of the present CBI Report and the entire paperback set of the petition along with counter affidavit and other relevant material be supplied to Ms Swapna Liddle, within four days from today.

Re-list the matter on 21.01.2025 as Part Heard.

The fee, etc. of the expert Ms Swapna Liddle will also be determined on the next date.

(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
COURT MASTER