

Reserved on : 25.04.2025
Pronounced on : 02.06.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.9010 OF 2025 (GM – RES)

BETWEEN:

SRI DENIS CRASTA
AGED 68 YEARS,
S/O LATE ELIAS CRASTA,
RESIDING AT
JEPPINAMOGERU ROAD,
THANDOLIGE, PADIL,
MANGALURU – 575 007.

... PETITIONER

(BY SRI PUNDIKAI ISHWARA BHAT, ADVOCATE)

AND:

1 . THE UNION OF INDIA
MINISTRY OF CULTURE
24, TILAK MARG, BHAGWAN DAS LANE,
MANDI HOUSE, NEW DELHI,
DELHI – 110 001
REPRESENTED BY
SUPERINTENDENT ARCHAEOLOGIST.

- 2 . THE SUPERINTENDING ARCHAEOLOGIST,
ARCHAEOLOGICAL SURVEY OF INDIA,
5TH FLOOR, 'F' WING,
KENDRIYA SADANA, KORAMANGALA,
BENGALURU – 560 034.

- 3 . THE COMPETENT AUTHORITY AND
REGIONAL DIRECTOR (KARNATAKA),
GOVT. OF INDIA'S NATIONAL MONUMENTS AUTHORITY,
KSIMC BUILDING, INDUSTRIAL ESTATE,
RAJAJINAGAR, BENGALURU – 560 010.

- 4 . THE COMMISSIONER,
CORPORATION OF CITY MANGALORE,
LALBAGH, MANGALURU - 575 003.

... RESPONDENTS

(BY SRI AJAY PRABHU, CGPC FOR R-1 AND R-2;
SRI SHAMANTH NAIK, HCGP FOR R-3;
SRI HARISH BHANDARY, ADVOCATE FOR R-4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER NO. 4007/CA/KAR/BC-2024-1042 DTD 28.01.2025 PASSED BY THE COMPETENT AUTHORITY AND REGIONAL DIRECTOR KARNATAKA /R-3 AS PER ANNEX-A; DIRECTING THE R-3 TO ISSUE NOC TO THE PETITIONER TO CONSTRUCT THE RESIDENTIAL HOUSE IN THE SCHEDULE PROPERTY AS PER THE LICENSE AT ANNEXURE-J1 AND APPROVED PLAN AT ANNEXURE-J2 ISSUED BY THE CITY CORPORATION OF MANGALORE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.04.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner calls in question an order dated 28-01-2025 passed by the Regional Director, National Monuments Authority, Government of India, Bengaluru declining to grant permission and directing to stop construction of the residential house in the schedule property.

2. Heard Sri Pundikai Ishwara Bhat, learned counsel appearing for the petitioner, Sri Ajay Prabhu, learned Central Government Panel Counsel appearing for respondents 1 and 2, Sri Shamanth Naik, learned High Court Government Pleader appearing for respondent No.3 and Sri Harish Bhandary, learned counsel appearing for respondent No.4.

3. Facts in brief, germane, are as follows:

The petitioner comes in possession of the subject property pursuant to a decree in a partition suit - O.S.No.901 of 1993. It appears that the judgment and decree in O.S.No.901 of 1993 was

challenged in R.A. Nos. 66 and 67 of 2009, which come to be dismissed on 21-02-2011. Both the judgments and decrees of the civil Court and the first Appellate Court were called in question in R.S.A.Nos.1413 and 1414 of 2011. During the subsistence of regular first appeals, the parties enter into a compromise and a coordinate Bench of this Court disposed of regular first appeals in terms of its order dated 22-04-2021 based on the said compromise petition filed before the Court. In terms of the compromise petition 'A' schedule property measuring 8.80 cents was allotted to the share of the petitioner. Final decree, in terms of the compromise petition, was drawn in F.D.P.No.18 of 2018 on 11-08-2022.

4. The petitioner then gets the khata changed into his name and becomes the absolute owner in possession and enjoyment of the schedule property of 8.80 cents in Mangalore Thota Village, Mangalore Taluk and applied for conversion of the land to residential purposes. The Deputy Commissioner, in terms of his order dated 27-09-2023, grants conversion. After securing conversion for residential purposes, the petitioner applies for licence to the Mangalore City Corporation ('the Corporation' for short) and

the Corporation in terms of its order dated 21-12-2023 grants licence in favour of the petitioner for construction of a house. The plan for construction was submitted to the Corporation which also comes to be approved. In terms of the permission so granted, the petitioner puts up construction up to a certain level.

5. When things stood thus, a stop notice comes to be issued by the Conservative Assistant of Archaeological Survey of India, Karkala Sub-Circle intimating that the petitioner was required to take a no objection from the Archaeological Survey of India before commencement of the construction, as the construction was coming within the regulated area of 150 meters on north-east side of Mangala Devi Temple which was declared as a protected monument under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 as amended in 2010 (hereinafter referred to as the 'Act' for short). The petitioner then replies to the said notice furnishing all the necessary details including licence obtained from the Corporation and submitted that construction has been put up to a particular level. The petitioner also sought for inspection of the site for a review of the stop notice and a no objection with regard to

construction. A spot inspection report was drawn and the appraisal was that construction was happening in the prohibited area, as it was within 64 meters from Mangala Devi Temple. The petitioner also receives another communication from the 3rd respondent that no objection for construction of residential building near centrally protected monument is refused as it is within 64 meters and in the prohibited area. The petitioner then represents for grant of no objection certificate. It is again rejected by the impugned order on 28-01-2025, which has driven the petitioner to this Court in the subject petition.

6. The learned counsel appearing for the petitioner would contend that the 3rd respondent has failed to exercise appropriate jurisdiction as there is no impediment for grant of NOC and the petitioner to go ahead with the construction as the constructed site is neither in a prohibited area or protected area. It is in the regulated area. If it is in the regulated area, flexibility would exist and it can be regulated. He would submit that google earth image that he has procured shows more than 151.1 meters between Mangala Devi Temple and his site. He would submit that the

respondents have erroneously drawn google earth image to show that it is at 64 meters. It is his submission that the construction does not have any adverse impact on the preservation, safety or security of the protected monument. The learned counsel would further contend that the petitioner is not putting up a new construction but has only brought down the earlier construction and started re-construction of the house. According to him the petitioner is not constructing anything new but only renovating the old one which is permissible under the Act. He would seek quashment of the order and permission to continue construction.

7. Per contra, the learned High Court Government Pleader representing the 3rd respondent would vehemently refute the submissions to contend that google earth images that are brought during the inspection clearly indicate that the property is at a distance of 64 meters from the protected monument where construction is completely prohibited. It is his submission that it would endanger the monument if the constructions of this kind are permitted. That the petitioner cannot be permitted to construct, as the construction has begun and come up to a certain level without

no objection from the 3rd respondent, which is an act of fraud played by the 4th respondent in connivance with the petitioner. The Corporation could not have issued NOC or sanctioned the plan for construction without a NOC from Archaeological Survey of India. He would seek dismissal of the petition.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated dates, link in the chain of events and the manner in which the petitioner comes in possession of the property are all a matter of record. The property was an agricultural land. The petitioner applies for conversion before the Deputy Commissioner. The Deputy Commissioner permits conversion of the land from agriculture to residential purposes. The order of conversion reads as follows:

“ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಅಧಿನಿಯಮ 1964 ರ ಕಲಂ 95 (2), 95(4) ಮತ್ತು 95(7) ರ ಷರತ್ತುಗಳು ಹಾಗೂ ಈ ಕೆಳಕಾಣಿಸಿದ ಷರತ್ತುಗಳಿಗೊಳಪಡಿಸಿ. ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ (ತಿದ್ದುಪಡಿ) ನಿಯಮಗಳು 1994 ರ ನಿಯಮ 107(1) ರಂತೆ ಅರ್ಜಿದಾರರಾದ ಶ್ರೀ ಡೆನಿಸ್ ಕ್ರಾಸ್ತಾ ಬಿನ್ ಎಲಿಯಾಸ್ ಕ್ರಾಸ್ತಾ ., ರವರ ಅರ್ಜಿಯನ್ನು ಪರಿಗಣಿಸಿ ಪಟ್ಟಣ ಗ್ರಾಮದ S06-1360/1 ರಲ್ಲಿ 356.120 ರಲ್ಲಿನ ಒಟ್ಟು

202.350 ಚದರ ಮೀಟರ್ ವಿಸ್ತೀರ್ಣದ ಅಸ್ತಿಯನ್ನು Residential - Personal Housing ಉದ್ದೇಶಕ್ಕಾಗಿ ಬಳಸಲು ಈ ಕೆಳಕಂಡ ಷರತ್ತುಗಳಿಗೆ ಒಳಪಟ್ಟು ಭೂ ಪರಿವರ್ತನಾ ಆದೇಶವನ್ನು ಹೊರಡಿಸಲಾಗಿದೆ.

1. ಈ ಭೂಮಿಯು ಯಾವ ಉದ್ದೇಶಕ್ಕಾಗಿ ಪರಿವರ್ತನೆಯಾಗಿದೆಯೋ ಆ ಉದ್ದೇಶಕ್ಕೆ ಉಪಯೋಗಿಸಿಕೊಳ್ಳಲು ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರಿಯಿಂದ, ಅಂದರೆ (/ಅಭಿವೃದ್ಧಿ ಮಂಡಳಿ /ಸಿಎಂಸಿ/ಟಿಎಂಸಿ/ಮಾಲಿನ್ಯ ನಿಯಂತ್ರಣ ಮಂಡಳಿ/ಗ್ರಾಮ ಪಂಚಾಯಿತಿಗಳಿಂದ ಮಂಜೂರಾತಿಯನ್ನು ಪಡೆಯದ ಹೊರತು ಈ ಆದೇಶವು ಅನುಭವದಾರನಿಗೆ ಯಾವುದೇ ಹಕ್ಕನ್ನು ನೀಡುವುದಿಲ್ಲ.

2. ಈ ಭೂಪರಿವರ್ತಿತ ಜಮೀನನ್ನು Residential | Personal Housing ಉದ್ದೇಶಕ್ಕಾಗಿ ಮಾತ್ರ ಉಪಯೋಗಿಸಿಕೊಳ್ಳತಕ್ಕದ್ದು. ಈ ಜಮೀನನ್ನು ಪೂರ್ವಾನುಮತಿ ಇಲ್ಲದೆ ಬೇರೆ ಉದ್ದೇಶಕ್ಕಾಗಿ ಉಪಯೋಗಿಸಬಾರದು.

3. ಈ ಅಸ್ತಿನಲ್ಲಿ ಉದ್ದೇಶಿಸಿರುವ ಬಡಾವಣೆ ನಕ್ಷೆ ಹಾಗೂ ಪರವಾನಗಿ ಇತ್ಯಾದಿಗಳನ್ನು (/ಪ್ರಾಧಿಕಾರ / ನಗರಪಾಲಿಕೆ/ಇತ್ಯಾದಿ) ರವರಿಂದ ಅನುಮೋದಿಸಿಕೊಂಡು, ಆ ನಂತರ ಅನುಮೋದನೆಗೊಂಡ ನಕ್ಷೆಗೆ ಅನುಗುಣವಾಗಿ ಕಟ್ಟಡವನ್ನು ಕಟ್ಟುವುದು. ಸದರಿ ಜಮೀನಿನಲ್ಲಿ ಲೇಔಟ್ ಪ್ಲಾನಿಗೆ ಅನುಮೋದನೆ ಪಡೆಯದೆ ಪರಬಾರೆ ಮಾಡಕೂಡದು.

4. ಇತರೆ ಅವಶ್ಯವಾದ ರಸ್ತೆ ಜಾಗ, ರಸ್ತೆ ಮಾರ್ಜಿನ್, ಖಾಲಿ ಜಾಗ ಇತ್ಯಾದಿಗಳನ್ನು (ಪ್ರಾಧಿಕಾರ / ನಗರಪಾಲಿಕೆ/ಇತ್ಯಾದಿ) ರವರಿಂದ ಅನುಮೋದಿಸಿದ ಬಡಾವಣೆ ನಕ್ಷೆ ಪ್ರಕಾರ ಹಾಗೂ ನಿರ್ದಿಷ್ಟಪಡಿಸಿದ ನಿಯಮಗಳ ರೀತ್ಯ ಸದರಿ ಉದ್ದೇಶಕ್ಕಾಗಿ ಕಾಯ್ದಿರಿಸತಕ್ಕದ್ದು.

5. ಸಾರ್ವಜನಿಕ ಹಿತದೃಷ್ಟಿಯಿಂದ ಸದರಿ ಅಸ್ತಿನಲ್ಲಿ ನಿವೇಶನದಾರರಿಗೆ ನಾಗರಿಕ ಸೌಲಭ್ಯಗಳಾದ ವಿದ್ಯುಚ್ಛಕ್ತಿ, ನೀರು ಸರಬರಾಜು ಒಳಚರಂಡಿ ವ್ಯವಸ್ಥೆ, ಇತ್ಯಾದಿಗಳನ್ನು ಆರೋಗ್ಯ ನೈರ್ಮಲ್ಯಕರಣ ಹಾಗೂ ಭದ್ರತೆಗಳ ಉದ್ದೇಶದಿಂದ ಎಲ್ಲಾ ಸೌಲಭ್ಯಗಳನ್ನು ಕಾನೂನು ರೀತ್ಯ ಒದಗಿಸಿಕೊಡುವುದು ಅರ್ಜಿದಾರರ ಜವಾಬ್ದಾರಿಯಾಗಿರುತ್ತದೆ.

6. ಸರ್ಕಾರದ ಆದೇಶ ಸಂ:ಪಿಡಬ್ಲ್ಯೂ.ಡಿ 7556-665-ಅರ್ ಮತ್ತು ಬಿ-6-54-5 ಮತ್ತು ಕೇಂದ್ರ ಸರ್ಕಾರದ ಸಾರಿಗೆ ಇಲಾಖೆಯ ಪತ್ರ ನಂ ಪಿ1:7(11)67, ದಿನಾಂಕ:1-1-1966 ರಂತೆ ಈ ಜಮೀನಿನಲ್ಲಿ ಕಟ್ಟಲು ಉದ್ದೇಶಿಸಿರುವ ಕಟ್ಟಡವು ರಾಷ್ಟ್ರೀಯ ಹಾಗೂ ರಾಜ್ಯ ಹೆದ್ದಾರಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಸ್ತೆಯ ಮಧ್ಯಭಾಗದಿಂದ 40 ಮೀಟರ್ ಗಳ ಅಂತರವನ್ನು ಮತ್ತು ಜಿಲ್ಲಾ ಹೆದ್ದಾರಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಸ್ತೆಯ ಮಧ್ಯಭಾಗದಿಂದ 25 ಮೀಟರ್ ಗಳ ಅಂತರವನ್ನು ಕಾಯ್ದಿರಿಸಬೇಕು ಹಾಗೂ ಈ ಖಾಲಿ ಪ್ರದೇಶದಲ್ಲಿ ಯಾವುದೇ ಕಟ್ಟಡವನ್ನು ಕಟ್ಟಬಾರದು.

7. ಅರ್ಜಿದಾರರು ನಗರ ಭೂ ಪರಿಮಿತಿ ಕಾಯಿದೆ 1976 ವಿಧಿ 6(1)ರ ಪ್ರಕಾರ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದಲ್ಲಿ ಘೋಷಣೆ ಪತ್ರವನ್ನು ಸಲ್ಲಿಸದಿದ್ದಲ್ಲಿ ಈಗ ತಕ್ಷಣ ಅಂತಹ ಘೋಷಣೆ ಪತ್ರವನ್ನು ಸಲ್ಲಿಸತಕ್ಕದ್ದು ಮತ್ತು ಈ ಆದೇಶದ ಪ್ರತಿಯನ್ನು ಸಂಬಂಧಪಟ್ಟ ಭೂ ಪರಿಮಿತಿ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಕಳುಹಿಸಲಾಗಿದೆ.

8. ಈ ಭೂ ಪರಿವರ್ತನಾ ಜಮೀನಿನಲ್ಲಿ ಸ್ಥಾಪಿಸಲಾಗುವ ಕೈಗಾರಿಕಾ ಘಟಕಗಳ ಹೊಗೆ ಅನಿಲ ಇತರೆ ಕಲ್ಮಶಗಳನ್ನು ಪರಿಣಾಮಕಾರಿಯಾಗಿ ತಡೆಗಟ್ಟಿ ಸಾರ್ವಜನಿಕರ ಆರೋಗ್ಯಕ್ಕೆ ಯಾವುದೇ ರೀತಿಯ ಹಾನಿಯಾಗದಂತೆ ಹಾಗೂ ಪರಿಸರ ಮಾಲಿನ್ಯವಾಗದಂತೆ ನೋಡಿಕೊಳ್ಳತಕ್ಕದ್ದು. ಕೈಗಾರಿಕಾ ಉದ್ದೇಶಕ್ಕಾಗಿ ಭೂ ಪರಿವರ್ತಿತ ಜಮೀನಿನಲ್ಲಿ ಸ್ಥಾಪಿಸುವ ಕೈಗಾರಿಕಾ ಘಟಕಗಳು ಕರ್ನಾಟಕ ಮಾಲಿನ್ಯ ನಿಯಂತ್ರಣ ಮಂಡಳಿ/ಪರಿಸರ ಇಲಾಖೆಗಳ ಅನುಮತಿ ಹೊಂದಿರತಕ್ಕದ್ದು.

9. ಮೇಲ್ಕಂಡ ಯಾವುದೇ ಷರತ್ತುಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿದಲ್ಲಿ ಈ ಭೂ ಪರಿವರ್ತನೆ ಆದೇಶ ಯಾವುದೇ ಸೂಚನೆ ನೀಡದೆ ರದ್ದುಗೊಳಿಸಲಾಗುವುದು ಮತ್ತು ಕರ್ನಾಟಕ ಭೂಕಂದಾಯ ಕಾಯ್ದೆ 1964 ರ ಕಲಂ 96 ರಂತೆ ದಂಡ ಶುಲ್ಕವನ್ನು ವಿಧಿಸಲು ಮುಂದಿನ ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಲಾಗುವುದು. ಅಲ್ಲದೇ ಈ ಜಮೀನಿನಲ್ಲಿ ಅನಧಿಕೃತವಾಗಿ ಕಟ್ಟಿದ ಕಟ್ಟಡಗಳನ್ನು ಯಾವುದೇ ಪರಿಹಾರ ನೀಡದೇ ತೆರವುಗೊಳಿಸಲು ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಲಾಗುವುದು. ಹಾಗೂ ಅದಕ್ಕೆ ತಗಲುವ ವೆಚ್ಚವನ್ನು ಭೂಕಂದಾಯ ಬಾಕಿ ಎಂದು ಖಾತೆದಾರರಿಂದ ವಸೂಲಿ ಮಾಡಲಾಗುವುದು.

ಹೆಚ್ಚುವರಿ ಷರತ್ತುಗಳು

1. ಈ ಭೂ ಪರಿವರ್ತನೆ ಆದೇಶವು ಮುಂದಿನ ಆದೇಶದವರೆಗೂ ಶಾಶ್ವತವಾಗಿ ಮಾನ್ಯವಾಗಿರುತ್ತದೆ, ಭೂ ಪರಿವರ್ತನೆಯ ಉದ್ದೇಶ ಬದಲಾವಣೆಯಾಗಬೇಕಾದರೆ ಸೆಕ್ಷನ್ 97 ರ ಪ್ರಕಾರ ಹೊಸ ಆದೇಶ ಪಡೆಯತಕ್ಕದ್ದು.

2. ಷರತ್ತು (9) ರಲ್ಲಿ ತಿಳಿಸಿರುವಂತೆ ಭೂ ಪರಿವರ್ತಿತ ಜಮೀನನ್ನು Residential - Personal Housing ಉದ್ದೇಶಕ್ಕಾಗಿ ಮಾತ್ರ ಉಪಯೋಗಿಸಿಕೊಳ್ಳತಕ್ಕದ್ದು, ಬೇರೆ ಉದ್ದೇಶಕ್ಕಾಗಿ ಉಪಯೋಗಿಸಬೇಕಾದರೆ ಸೆಕ್ಷನ್ 97 ರ ಪ್ರಕಾರ ಮರು ಅನುಮತಿಯನ್ನು ಪಡೆಯತಕ್ಕದ್ದು. ಸದರಿ ಭೂ ಪರಿವರ್ತಿತ ಜಮೀನನ್ನು ಯಾವ ಉದ್ದೇಶಗಳಿಗೆ ಪರಿವರ್ತನೆಯಾಗಿದೆಯೋ ಆ ಉದ್ದೇಶಗಳಿಗೆ ಯೋಜನಾ ಪ್ರಾಧಿಕಾರ / ಅಭಿವೃದ್ಧಿ ಮಂಡಳಿ / ಸಿಎಂಸಿ / ಟಿಎಂಸಿ / ಮಾಲಿನ್ಯ ನಿಯಂತ್ರಣ ಮಂಡಳಿ / ಗ್ರಾಮ ಪಂಚಾಯಿತಿಗಳಿಂದ ಅಗತ್ಯ ಮಂಜೂರಾತಿಯನ್ನು ಪಡೆಯತಕ್ಕದ್ದು.

3. ಸದರಿ ಭೂಪರಿವರ್ತನೆ ಆದೇಶವನ್ನು ಅರ್ಜಿದಾರರು ನೀಡಿರುವ ಅಫಿಡವಿಟ್ (ಪ್ರಮಾಣಪತ್ರ) ಆಧಾರದಲ್ಲಿ ನೀಡಲಾಗಿದ್ದು ಅಫಿಡವಿಟ್ ಪ್ರಮಾಣಪತ್ರದಲ್ಲಿ ನೀಡಿರುವ ಮಾಹಿತಿಯು ಒಂದು ವೇಳೆ ತಪ್ಪಾಗಿದ್ದಲ್ಲಿ ಈ ಆದೇಶವು ನಿಯಮಾನುಸಾರ ರದ್ದತಿ ಮಾಡುವ ಷರತ್ತಿಗೆ ಒಳಪಡುತ್ತದೆ

ಷೆಡ್ಯೂಲ್ ವಿವರ

ದಕ್ಷಿಣ ಕನ್ನಡ ಜಿಲ್ಲೆ, ಮಂಗಳೂರು ತಾಲ್ಲೂಕು, ಪಟ್ಟಣ, S06-1360/1, ರಲ್ಲಿನ ಒಟ್ಟು ಎಕರೆ 202.350 ಚದರ ಮೀಟರ್ ವಿಸ್ತೀರ್ಣವು ಭೂಪರಿವರ್ತನೆಯಾಗಿದ್ದು, ಇದರ ಚಕ್ಕುಬಂದಿ :

ಯುಪಿಟಆರ್ ಆಸ್ತಿ ಸಂಖ್ಯೆ:	ವಿಸ್ತೀರ್ಣ	ಚಕ್ಕುಬಂದಿ			
		ಪೂರ್ವಕ್ಕೆ	ಪಶ್ಚಿಮಕ್ಕೆ	ಉತ್ತರಕ್ಕೆ	ದಕ್ಷಿಣಕ್ಕೆ
S06-1360/1	202.350	S06-1360/1	S06-1360/1	S06-1360/1	S06-1360/1

DC Name:
Mullai Muhilan MP

ಸಹಿ/-
ಜಿಲ್ಲಾಧಿಕಾರಿ,
ದಕ್ಷಿಣ ಕನ್ನಡ ಜಿಲ್ಲೆ.”

Pursuant to conversion of land, the petitioner applies for permission to construct ground floor and first floor on the property. Permission is granted by the Corporation on 21-12-2023. The sanction for construction reads as follows:

“ಮಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆ
ಕಟ್ಟಡ ಪರವಾನಿಗೆ

ಕರ್ನಾಟಕ ಮಹಾನಗರ ಪಾಲಿಕೆಗಳ ಅಧಿನಿಯಮ-1976ರ ಕಲಂ 301 ಹಾಗೂ ಕರ್ನಾಟಕ ನಗರ ಮತ್ತು
ಗ್ರಾಮಾಂತರ ಯೋಜನಾ ಕಾಯ್ದೆ-1961ರ ಕಲಂ 15ರ ಅನ್ವಯ

ಸಂಖ್ಯೆ: MNG-LBPAS-19195/23-24/BP

ದಿನಾಂಕ: 21 Dec 2023

ಅರ್ಜಿ ಸಂಖ್ಯೆ: MNG-LBPAS-19195/23-24/BP, ದಿನಾಂಕ: 12 Dec 2023 ರಂದು ಶ್ರೀಮತಿ
/ ಶ್ರೀ DENNIS CRASTA ರವರು ನೀಡಿದ ಅರ್ಜಿಯನ್ನು ಪರಿಶೀಲಿಸಲಾಯಿತು, ಅದಕ್ಕೆ
ಲಗತ್ತಿಸಲಾಗಿರುವ ನಕ್ಷೆಯನ್ನು ಅನುಸರಿಸಿ Mangaluru City Corporation ವ್ಯಾಪ್ತಿಯ ಕಂದಾಯ

ವಸೂಲಾತಿ ಏರಿಯಾ ಸಂಖ್ಯೆ:639/(P) (ಪ್ರಸ್ತುತ ಚುನಾವಣಾ ವಾರ್ಡ್ ಸಂಖ್ಯೆ:54), Dakshina Kannada,54 ಪ್ರದೇಶದಲ್ಲಿರುವ ಗ್ರಾಮದ ರೆವಿನ್ಯೂ ಸರ್ವೇ ನಂಬರ್: 639/(P), ನಿವೇಶನದ ಸಂಖ್ಯೆ 639/(P) ಅಸೆಸ್‌ಮೆಂಟ್ / ಖಾತೆ / ಡೋರ್ ನಂಬರ್ 23131060, ಶ್ರೀಮತಿ/ಶ್ರೀ DENNIS CRASTA #5/179/3 JAPPINAMOGARU TANDOLIGE PADI|| ಇವರ ಮಾಲೀಕತ್ವದ ಸ್ವತ್ತಿನಲ್ಲಿ ಈ ಕೆಳಗೆ ಕಾಣಿಸಿದ ಷರತ್ತುಗಳು ಹಾಗೂ ನಿಬಂಧನೆಗಳಿಗೊಳಪಟ್ಟು ವಸತಿ ಉದ್ದೇಶಕ್ಕೆ ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಮಾಡಲು ಪರವಾನಿಗೆ ಮಂಜೂರು ಮಾಡಲಾಗಿದೆ.

ಮಂಜೂರಾದ ಪರವಾನಿಗೆ ವಿವರಗಳು :

- ಕಟ್ಟಡವನ್ನು ಜಾಗದ ಎಡ ಭಾಗದಲ್ಲಿ 0.50 ಮೀ., ಬಲ ಭಾಗದಲ್ಲಿ 0.98 ಮೀ., ಹಿಂಭಾಗದಲ್ಲಿ 1.00 ಮೀ, ಮುಂಭಾಗದಲ್ಲಿ 2.63 ಮೀ., ಜಾಗವನ್ನು ಬಿಟ್ಟು ಕಟ್ಟಿಕೊಳ್ಳಬೇಕು.
ನಿವೇಶನದ ವಿಸ್ತೀರ್ಣ :202.13 ಚ.ಮೀ., ಎಫ್.ಎ.ಆರ್ : 0.88

ಪೂರ್ವಕ್ಕೆ :RSY NO 639/(P)

ಪಶ್ಚಿಮಕ್ಕೆ :RSY NO 639/(P)

ಉತ್ತರಕ್ಕೆ :ROAD

ದಕ್ಷಿಣಕ್ಕೆ :RSY NO 639/(P)

ಮಹಡಿಯ ಸಂಖ್ಯೆ	ಮಹಡಿಯ ಉಪಯೋಗ	ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ (ಚದರ ಮೀಟರ್)	ಒಟ್ಟು ಕಡಿತ ಗೊಳಿಸಿದ ವಿಸ್ತೀರ್ಣ (ಚದರ ಮೀಟರ್)	ನಿರ್ಮಿಸಿದ ವಿಸ್ತೀರ್ಣ (ಚದರ ಮೀಟರ್)	ನಿವ್ವಳ ಕಡಿತಗೊಳಿಸಿದ ವಿಸ್ತೀರ್ಣ (ಚದರ ಮೀಟರ್)	FAR ವಿಸ್ತೀರ್ಣ (ಚದರ ಮೀಟರ್)
GROUND FLOOR	ವಸತಿ	121.19	0	121.19	32.21	88.98
FLOOR	ವಸತಿ	101.52	0	101.52	12.54	88.98
1						
ROOF	ಚಾವಣಿ	0	0	0	0	0
	ಮೊತ್ತ	222.71	0	222.71	44.75	177.96"

Plan is submitted for approval and the plan is sanctioned by the Corporation and construction comes up to a certain level. The Archaeological Survey of India then issues a stop notice on 04-05-2024. This notice is the beginning of the issue in the subject petition. The stop notice reads as follows:

"Date: 04-05-2024

STOP NOTICE

Whereas, it has been brought to the notice of this office **Mr. Dennis Crasta Mangala Nagara, Crasta Compound, Near Mangala Devi Temple, Mangalore (575001)** is carrying out unauthorized new construction of **House** within the **Regulated area** around **150 Mts.** In North-East side of **Mangala Devi Temple at Mangalore**, Centrally Protected Monument without obtaining an NOC for the same from the Competent Authority (Competent Authority (Karnataka)/ Regional Director (South), Archaeological Survey of India, KSIMC Building, Industrial Estate, Rajajinagar, Bangalore-43), which is illegal under the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 as amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010.

WHEREAS, Section 20A of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and Ancient Monuments and Archeological Sites and Remains Act (Amendment and Validation) Act, 2010, provides that, every area, beginning at the limit of Protected area or the protected monument as the case may be, and extending to a distance of 100 meters in all directions shall be the Prohibited area in respect of such protected area or Protected monument.

AND Section 20B of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and Ancient Monuments and Archaeological Sites and Remains Act Amendment and Validation) Act, 2010 provides that,

every area, beginning at the limit of the Prohibited area in respect of every ancient monument and Archaeological site and remains, declared as of National importance under Sections 3 and 4 and extending to a distance of 200 meters in all direction shall be the Regulated area in respect of every ancient monument and archaeological site and remains;

AND WHEREAS sub-section (1) of Section 20C of the Ancient Monuments Archaeological Sites and Remains (Amendment and Validation) Act, 2010 provides that 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 obtain prior permission from the Competent Authority for carrying out such repair or renovation as the case may be, under Sub-section (4) of Section 20A no permission shall be granted for construction works in Prohibited area. Under Section 30A of the said Act, whoever raises, any construction in the prohibited area, shall be punishable with imprisonment not exceeding two years or with fine which may extend to one lakh rupees or with both.

AND WHEREAS sub-section (2) of Section 20C of the Ancient Monuments Archaeological Sites and Remains (Amendment and Validation) Act, 2010 provides that any person, who owns or possess any building or structure or land in any Regulated area and desire to carryout any construction or reconstruction or repair of 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. Under Section 30(B) of the said Act, whoever raises, any construction in the Regulated area without the previous permission of the Competent Authority or in contravention of the permission granted by the Competent Authority, shall be punishable with imprisonment not exceeding 2 years or with fine which may extend to one lakh rupee or with both.

NOW THEREFORE you are directed to stop unauthorized constructions/repairs/renovations/reconstructions immediately and intimate the undersigned within 03 days about the action taken to stop work. You are also directed to approach the Competent Authority (Karnataka)/Regional Director (South), Archaeological Survey of India, KSIMC Building, Industrial Estate, Rajajinagar, Bangalore-43 for obtaining permission.

To

Mr. Dennis Crasta,
Manager Nagara, Crasta Compound,
Near Mangala Devi Temple,
Mangalore- (575 001)"

(Emphasis added)

The issue is, why did Archaeological Survey of India enter into the scenario. It is the allegation in the stop notice that the petitioner is constructing a new house in the regulated area around 150 meters from '**Mangala Devi Temple**' at Mangalore. Mangala Devi Temple is declared to be a protected monument under the Act and any construction in the surrounding area of the protected monument is regulated under the Act and the Rules framed thereunder.

10. Therefore, it becomes necessary to notice certain provisions of the Act. The protection, prohibition and regulation of construction activities is regulated under the Act. Section 2(da) of

the Act defines "Authority", Section 2(db) defines "Competent Authority", 2(ha) defines "prohibited area", Section 2(i) defines "protected area", Section 2(j) defines "protected monument", Section 2(k) defines "re-construction", Section 2(l) defines "regulated area" and Section 2(m) defines "repair and renovation", all of which read as follows:

"Section 2(da) - "Authority" means the National Monuments Authority constituted under section 20F.

Section 2(db) - "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 this Act:

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

.... ..

Section 2(h) - "prescribed" means prescribed by rules made under this Act;

Section 2(ha) - "prohibited area" means prescribed by rules made under this Act;

Section 2(i) - "protected area" means any archaeological site and remains which is declared to be of national importance by or under this Act;

Section 2(j) - "protected monument" means any ancient monument which is declared to be of national importance by or under this Act.

Section 2(k) - "re-construction" means any erection of a structure or building to its pre-existing structure, having the same horizontal and vertical limits;

Section 2(l) - "regulated area" means any area specified or declared under section 20B;

Section 2(m) - "repair and renovation" means alterations to a pre-existing structure or building, but shall not include construction or re-construction."

Prohibited area and regulated area are as found in Sections 20A and 20B of the Act, which read as follows:

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

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 the prohibited area having regard to the classification of any protected monument or protected area, as the case may be, under section 4A.

(2) Save as otherwise provided in section 20C, 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-

- (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.

it or he may, notwithstanding anything contained in sub-section (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:

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 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:

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.

Section 20B - Declaration of regulated area in respect of every protected monument. - Every area, beginning at the limit of prohibited area in respect of every ancient monument and archaeological site and remains, declared as of national importance under sections 3 and 4 and extending to a distance of two hundred metres in all directions shall be the regulated area in respect of every ancient monument and archaeological site and remains:

Provided that the Central Government may, by notification in the Official Gazette, specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, under section 4A:

Provided further 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 regulated area in respect of such protected monument, shall be deemed to be the regulated area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction in such regulated area 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."

(Emphasis supplied)

An application for renovation in the prohibited area, construction or re-construction or repair or renovation in the regulated area is dealt with in Section 20C and grant of permission by competent authority within regulated area is dealt with in Section 20D of the Act, which read as under:

“Section 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.
- (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.

Section 20D - Grant of permission by competent authority within regulated area.—

- (1) Every application for grant of permission under section 20C 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:

Provided that the Central Government may prescribe the category of applications in respect of which the permission may be granted under this sub-section and the application which shall be referred to the Authority for its recommendations.

- (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 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.
- (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:

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 20C until the heritage bye- laws have been prepared under sub-section (1) of section 20E and published under sub-section (7) of that section.

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

The afore-quoted provision of law clearly mandate, that there can be no construction activities in the prohibited, and regulated areas, of a site which has been declared to be monument of national importance, except in terms of the afore extracted provisions of law, as Section 20C of the Act clearly mandates that what is permissible is only repair or renovation of an earlier existing building. A new construction in the prohibited and regulated areas is clearly barred under Sections 20A and 20B of the Act.

11. Provisions of the Act would clearly indicate that what is permitted around protected monument is only a repair or renovation of an earlier existing building. The plan that is sought for, by the petitioner, is noted hereinabove. It is ground floor and first floor and a new construction. Nowhere the permission is

granted by the Corporation for renovation. Photographs of construction that are appended to the petition would clearly demonstrate that it is a new construction after razing the old construction to the ground. The contention is that the petitioner's property is being constructed beyond 150 meters which is permissible. The learned counsel appearing for the 2nd respondent- Archaeological Survey of India has produced the site inspection report. The site inspection report clearly indicates that it is within 64 meters from the prohibited area. The indication in the report is as follows:

<p>"8. Distance from the protected monument / protected area: (distance should be measured from the notified boundary)</p>	<p>64.00 Meters – Prohibited area.</p>
---	---

(Emphasis supplied)

The respondents have also produced google earth images. According to the petitioner, the google earth image taken shows the distance as 151.01 meter. It is deliberately shot from a different angle and enlarged so that the distance would change. The

respondents have placed google earth image taken by them which clearly depicts that the property which is being constructed is within 64 meters from the protected monument. Around the protected monument, as observed hereinabove, the statute clearly bars any kind of new construction, but permits only repair and minor renovation of an old structure. Therefore, the permission granted falls foul of the mandate of the statute, so does the construction.

12. It becomes apposite to refer to the judgment of the Apex Court in the case of **ARCHAEOLOGICAL SURVEY OF INDIA v. NARENDER ANAND**¹, wherein the Apex Court has delineated entire spectrum of the statute, considering every one of the provisions. The Apex Court has held as follows:

“....

2. While the Archaeological Survey of India has questioned the direction given by the Division Bench of the High Court for review of Notification dated 16-6-1992, Respondents 1 and 2 have challenged that portion of the impugned judgment by which the Division Bench vacated the order of injunction passed by the learned Single Judge.

3. Archaeological and historical pursuits in India started with the efforts of Sir William Jones, who put together a group of antiquarians to form the Asiatic

¹ (2012) 2 SCC 562

Society on 15-1-1784 in Calcutta. He was supported by many persons who carried out survey of monuments in various parts of India. The identification of Chandragupta Maurya with Sandrokottos of Greek historians by Jones helped in fixing a chronological horizon of Indian history. This was followed by the identification of Pataliputra (Palibothra of classical writings) at the confluence of Ganga and Sone. The decipherment of Gupta and Kutila scripts by Charles Wilkinson was a landmark in this regard. Thereafter, many individuals made contribution in surveying different monuments in India.

4. In 1861, Alexander Cunningham was appointed as the first Archaeological Surveyor. He surveyed areas stretching from Gaya in the east to Indus in the north-west, and from Kalsi in the north to Narmada in the south, between 1861 and 1865. For this, he largely followed the footsteps of the Chinese pilgrim Hiuen Tsang. However, with the abolition of the Archaeological Survey in 1866, this work came to a grinding halt.

5. In the meanwhile, an Act was passed in 1863 empowering the Government to prevent injury to, and preserve the buildings remarkable for their antiquity and historical or architectural value. In 1878, the Treasure Trove Act was enacted which enabled the Government to confiscate treasures and antiques found during chance digging. After 26 years, the Ancient Monuments Preservation Act, 1904 (for short "the 1904 Act") was enacted for the preservation of ancient monuments and objects of archaeological, historical or artistic interest.

6. Section 2(1) of the 1904 Act, which contains the definition of "ancient monument" and Section 3 under which the Central Government was empowered to declare an ancient monument to be a protected monument were as under:

"2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(1) 'ancient monument' means any structure, erection or monument or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or

artistic interest, or any remains thereof, and includes—

(a) the site of an ancient monument;

(b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and

(c) the means of access to and convenient inspection of an ancient monument;

* * *

3. Protected monuments.—(1) The Central Government may, by notification in the Official Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.

(2) A copy of every notification published under subsection (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the Central Government within one month from the date when it is so fixed up will be taken into consideration.

(3) On the expiry of the said period of one month, the Central Government, after considering the objections, if any, shall confirm or withdraw the notification.

(4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act."

7. The Framers of the Constitution were very much conscious of the need of protecting the monuments and places/objects of artistic and historic importance. This is why Article 49 was incorporated in the directive principles of State policy (Part IV of the Constitution) whereby an obligation has been imposed on the State to protect every monument or place or object of artistic or historic interest declared by or under law made by Parliament. For the sake of reference Article 49 is reproduced below:

"49. Protection of monuments and places and objects of national importance.—It shall be

the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be."

8. In 1951, Parliament enacted the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, whereby certain monuments, etc. were declared to be of national importance. After 7 years, Parliament enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short "the 1958 Act") to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects. Similar legislations have been enacted by various State Legislatures with reference to Schedule VII List II Entry 12 of the Constitution.

9. The definition of "ancient monument" contained in Section 2(a) and Sections 3, 4, 38(1), (2)(a) and (b) and 39 of the 1958 Act, which are relevant for deciding the issues raised in these appeals are reproduced below:

"2. Definitions.—In this Act, unless the context otherwise requires—

(a) '**ancient monument**' means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes—

(i) the remains of an ancient monument,

(ii) the site of an ancient monument,

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(iv) the means of access to, and convenient inspection of an ancient monument;

3. Certain ancient monuments, etc. deemed to be of national importance.—All ancient and historical monuments and all archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), or by Section 126 of the States Reorganisation Act, 1956 (37 of 1956), to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purposes of this Act.

4. Power of Central Government to declare ancient monument, etc. to be of national importance.—(1) Where the Central Government is of opinion that any ancient monument or archaeological site and remains not included in Section 3 is of national importance, it may, by notification in the Official Gazette, give two months' notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance; and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification, object to the declaration of the monument, or the archaeological site and remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument or the archaeological site and remains; as the case may be, to be of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or the archaeological site and remains to which it relates is of national importance for the purposes of this Act.

38. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the prohibition or regulation by licensing or otherwise of mining, quarrying, excavating, blasting or any operation of a like nature near a protected monument or the construction of buildings on land adjoining such monument and the removal of unauthorised buildings;

(b) the grant of licences and permissions to make excavations for archaeological purposes in protected areas, the authorities by whom and the restrictions and conditions subject to which, such licences may be granted, the taking of securities from licensees and the fees that may be charged for such licences;

* * *

39. Repeals and saving.—(1) The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), and Section 126 of the States Reorganisation Act, 1956 (37 of 1956), are hereby repealed.

(2) The Ancient Monuments Preservation Act, 1904 (7 of 1904), shall cease to have effect in relation to ancient and historical monuments and archaeological sites and remains declared by or under this Act to be of national importance, except as respects things done or omitted to be done before the commencement of this Act."

10. In exercise of the power vested in it under Section 38 of the 1958 Act, the Central Government enacted the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 the relevant provisions whereof are extracted below:

"31. Notice or intention to declare a prohibited or regulated area.—(1) Before declaring an area near or adjoining a protected monument to be a prohibited area or a regulated area for purposes of mining operation or

construction or both, the Central Government shall, by notification in the Official Gazette, give one month's notice of its intention to do so, and a copy of such notification shall be affixed in a conspicuous place near the area.

(2) Every such notification shall specify the limits of the area which is to be so declared and shall also call for objection, if any, from interested persons.

32.Declaration of prohibited or regulated area.—After the expiry of one month from the date of the notification under Rule 31 and after considering the objections, if any, received within the said period, the Central Government may declare, by notification in the Official Gazette, the area specified in the notification under Rule 31, or any part of such area, to be a prohibited area, or, as the case may be, a regulated area for purposes of mining operation or construction or both.

33.Effect of declaration of prohibited or regulated area.—No person other than an Archaeological Officer shall undertake any mining operation or any construction—

- (a) in a prohibited, area, or
- (b) in a regulated area except under and in accordance with the terms and conditions of a licence granted by the Director General.”

... ..

43. At this stage, it is apposite to mention that during the pendency of these appeals the 1958 Act was amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 and Sections 20-A and 20-B were inserted with effect from 16-6-1992 and Sections 20-C to 20-Q were inserted with effect from 29-3-2010.

44. Since the validity of the Amendment Act has not been questioned before us, we do not propose to examine the same. However, we would like to notice the provisions of Sections 20-A, 20-B, 20-C and 20-F(1) and (2), the interpretation of which will have far-reaching impact on the future of protected monuments of national and international importance including Jantar Mantar, New Delhi. These sections read as under:

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

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 the prohibited area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A.

(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—

- (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.

It or he may, notwithstanding anything contained in sub-section (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:

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 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:

Provided further that nothing contained in the first proviso shall apply to any permission granted, subsequent to the completion of construction or reconstruction 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) No. S.O. 1764, dated 16-6-1992 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 No. 24/22/2006-M, dated 20-7-2006 (subsequently referred to as the Expert Advisory Committee in orders dated 27-8-2008 and 5-5-2009).

(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.

20-B. Declaration of regulated area in respect of every protected monument.—(1) Every area, beginning at the limit of prohibited area in respect of every ancient monument and archaeological site and remains, declared as of national importance under Sections 3 and 4 and extending to a distance of two hundred metres in all directions shall be the regulated area in respect of every ancient monument and archaeological site and remains:

Provided that the Central Government may, by notification in the Official Gazette, specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A:

Provided further 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 regulated area in respect of such protected monument, shall be deemed to be the regulated area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction in such regulated area 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.

20-C. Application for repair or renovation in prohibited area, or construction or reconstruction 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.

(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 reconstruction 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 reconstruction or repair or renovation, as the case may be.

* * *

20-F. Constitution of National Monuments Authority.—(1) The Central Government shall, by notification in the Official Gazette, constitute an Authority to be called as the National Monuments Authority.

(2) The Authority shall consist of—

- (a) a Chairperson, on whole-time basis, to be appointed by the President, having proven experience and expertise in the fields of archaeology, country and town planning, architecture, heritage and conservation-architecture or law;
- (b) such number of members not exceeding five whole-time members and five part-time members to be appointed, on the recommendation of the Selection Committee referred to in Section 20-G, by the Central Government, having proven experience and expertise in the fields of archaeology, country and town planning, architecture, heritage, conservation-architecture or law;
- (c) the Director General as member, ex officio."

45. What has been done by enacting Sections 20-A and 20-B is to give legislative mandate to the concept of prohibited and regulated areas respectively for the purposes of mining operation and construction. Before the 2010 Amendment, the Central Government could issue notification under Rule 31 read with Rule 32 and declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction or both. With the insertion of Section 20-A it has been made clear that every area, beginning 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.

46. Not only this, by virtue of the proviso to Section 20-A(1) the Central Government has been clothed with the power to extend the prohibition beyond 100 m by issuing a notification in the Official Gazette keeping in view the classification of any protected monument or protected area, as the case may be, under Section 4-A. Of course, this power can be exercised only on the recommendations of the Authority as defined in Section 2(*da*) and constituted under Section 20-F. Somewhat similar provision has been made in Section 20-B for the regulated area

in respect of every ancient monument and archaeological site and remains. The proviso to that section empowers the Central Government to issue notification in the Official Gazette and specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A.

47. In terms of Section 20-A(2), it has been made clear that no person other than an Archaeological Officer shall carry out any construction in any prohibited area. This is subject to Section 20-C, which can be treated as an exception to Section 20-A(2). That section lays down that any person who owns any building or structure, which existed in a prohibited area before 16-6-1992 or had been subsequently constructed with the approval of the Director General may carry out any repair or renovation of such building or structure by making an application to the competent authority. The term "renovation" appearing in Section 20-C will take its colour from the word "repair" appearing in that section. This would mean that in the garb of renovation, the owner of a building cannot demolish the existing structure and raise a new one and the competent authority cannot grant permission for such reconstruction.

48. Section 20-A(3) lays down that the Central Government or the Director General can, in exceptional cases and having regard to the public interest, pass a reasoned order and permit a public work or any project essential to the public or other construction in a prohibited area provided that such construction does not have substantial adverse impact on the preservation, safety, security of, or access to the protected monuments or its immediate surrounding. The use of the expression "such other work or project" in clause (b) of Section 20-A(3), if interpreted in isolation, may give an impression that the Central Government or the Director General is empowered to allow any other work or project by any person in the prohibited area but, in our view, the said expression has to be interpreted keeping in view the mandate of Article 49 of the Constitution and the objects sought to be achieved by enacting the 1958 Act i.e. preservation of ancient and historical

monuments, archaeological sites and remains of national importance. This would necessarily imply that "such other work or project" must be in the larger public interest in contrast to private interest.

49. In other words, in exercise of power under Section 20-A(3), the Central Government or the Director General cannot pass an order by employing the stock of words and phrases used in that section and permit any construction by a private person de hors public interest. Any other interpretation of this provision would destroy the very object of the 1958 Act and the prohibition contained in the Notification dated 16-6-1992 and subsection (1) of Section 20-A would become redundant and we do not think that this would be the correct interpretation of the amended provision. It also needs to be emphasised that public interest must be the core factor to be considered by the Central Government or the Director General before allowing any construction and in no case the construction should be allowed if the same adversely affects the ancient and historical monuments or archaeological sites.

50. We may now revert to the impugned judgment in these appeals. In our view, the Archaeological Survey of India is fully justified in making a grievance that the Division Bench of the High Court was not justified in directing the Central Government to review the prohibition contained in the Notification dated 16-6-1992. The High Court's anxiety to maintain a balance between the dire necessity of protecting historical monuments of national and international importance and development of infrastructures is understandable, but it is not possible to approve the fiat issued to the Central Government to review the prohibition contained in the Notification dated 16-6-1992. That notification was issued by the Central Government for implementing the policy enshrined in Article 49 of the Constitution and the 1958 Act i.e. to preserve and protect ancient and historical monuments and archaeological sites and remains of national importance.

51. Section 19 of the 1958 Act contains a restriction against construction of any building within the protected area or carrying out of any mining, quarrying, excavating, blasting or

any other operation of similar nature in such area. Rules 31 and 32 of the Rules empower the Central Government to declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction. The Central Government must have issued the Notification dated 16-6-1992 after consulting experts in the field and keeping in view the object of the 1958 Act. Therefore, in the name of development and accommodating the need for multi-storeyed structures, the High Court could not have issued a mandamus to the Central Government to review/reconsider the Notification dated 16-6-1992 and that too by ignoring that after Independence a large number of protected monuments have been facing the threat of extinction and if effective steps are not taken to check the same, these monuments may become part of history.

52. One of such monuments is Jantar Mantar, New Delhi. Some of its instruments have become unworkable/non-functional. This is largely due to construction of multi-storeyed structures around Jantar Mantar. Therefore, we have no hesitation to hold that the High Court was not justified in directing the Central Government to review or reconsider the Notification dated 16-6-1992 and, to that extent, the impugned judgment is liable to be set aside. We may add that with the insertion of Sections 20-A and 20-B, the direction given by the High Court for review of the Notification dated 16-6-1992 has become infructuous and the Government is no longer required to act upon the same.

53. The appeal of Respondents 1 and 2 is wholly meritless. The High Court, in our view, has rightly held that even though the Notification dated 3-5-1957 did not become effective because the same was not published in the Official Gazette, the earlier Notification issued on 4-10-1956 remained effective and the same was saved by Section 39(2) of the 1958 Act. We may add that even though the Notification dated 3-5-1957 was issued in supersession of the Notification dated 4-10-1956, the same remained alive because of non-compliance with Section 3(2) of the 1904 Act. The High Court's interpretation of the prohibition contained in the Notification dated 16-6-1992 is correct and the distance of 100 m has to be counted from the outer boundary wall of Jantar Mantar which has protected area

of 5.39 acres and not the physical structures of the observatory. The High Court has given detailed reasons for rejecting the plea of Respondents 1 and 2 that the provisions of the DDA Act would prevail over those contained in the 1958 Act and we entirely agree with it.”

(Emphasis supplied)

13. In the light of unequivocal facts obtaining in the case at hand, as narrated hereinabove, and statutory mandate and judgment rendered by the Apex Court, the unmistakable inference is that the construction of the petitioner cannot be permitted to be completed. **It is to be noticed that framers of the Constitution were conscious of the need to shield the monuments and places of historic importance from spoliation and disfigurement.** This is the soul of Article 49 of the Constitution of India. Article 49 reads as follows:

“49. Protection of monuments and places and objects of national importance.—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.”

(Emphasis supplied)

Article 49, a part of the directive principles of the State policy mandates protection of monuments and places and objects of national importance. **It is the obligation of the State to protect every monument of historic interest.** If this is the mandate of the Constitution, in terms of law and when Mangala Devi Temple is declared to be a protected monument, it is ununderstandable as to how the Corporation has granted permission to put up a new construction, that too without keeping Archaeological Survey of India in the loop, is deeply perturbing. **Permission is granted in blithe ignorance or indifference to the statutory embargo. Public functionaries are the custodians of the law, not its adversaries.**

14. The Corporation officials have wantonly ignored the mandate of the law in permitting construction of the kind that is permitted in the case at hand, which undoubtedly undermines statutory sanctity. Therefore, action should ensue against those erring officials who have permitted such construction. A departmental enquiry shall be initiated against those erring officials and appropriate action be taken, on identification of the role of such

erring officers *qua* the permission granted for putting up the subject construction. The departmental enquiry shall be held in strict consonance with the principles of natural justice and affording of adequate opportunity to such officials so identified. I further deem it appropriate to direct the State Government in the Department of Urban Development, to issue a circular to restrict the officers from granting permission to put up new constructions, in and around the protected monuments, and if any permission is to be granted in tune with the statute, such permission shall precede a no objection from the Archeological Survey of India. The circular shall also indicate that permissions if granted by officers contrary to law, they would be doing so at their peril, making themselves open for initiation of a departmental enquiry.

15. For the aforesaid reasons, the following:

ORDER

- (i) The Writ Petition being devoid of merit stands **dismissed.**

- (ii) The impugned order dated 28-01-2025 issued by the Regional Director, National Monuments Authority stands upheld.
- (iii) The petitioner is restrained from proceeding with the construction which stands in breach of Section 20A and 20B of the Ancient Monuments and Archaeological Sites and Remains Act.
- (iv) A copy of this order shall be transmitted to the Principal Secretary, Department of Urban Development for its compliance of issuance of a circular.
- (v) A circular shall be issued within 8 weeks from the date of receipt of the copy of the order and the same be placed before the Registry of this Court.
- (vi) Departmental enquiry against the erring officials be initiated and conducted strictly in consonance with principles of natural justice after identifying those officers who has/have granted permission to put up a new construction contrary to the Statute.

- (vii) Action taken report on the said departmental enquiry shall also be placed before the Registry of this Court within 3 months from the date of receipt of the copy of this order.

SD/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ