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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1475/2001**

S.N.BHARDWAJ ADVOCATE

.....Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate
(Amicus Curiae) with Mr. Sanjeevi
Seshadri, Mr. Sukrit Seth, Mr.
Shreedhar Kale, Mr. Aditya Rajgopal
and Ms. Radhika Yadav, Advocates.

versus

ARCHCOLOGICAL SURVEY OF INDIA

.....Respondent

Through: Mr. Chetan Sharma, ASG with Mr.
Amit Tiwari, CGSC, Mr. Amit Gupta,
Mr. Ayush Tanwar, Ms. Ayushi
Srivastava, Mr. Arpan Narwal, Mr. R.R.
Prabhat, Mr. Vinay Yadav, Mr.
Shubham Sharma, Mr. Naman and Mr.
Yash Wardhan Sharma, Advocates for
ASI/IOI.

Mr. Sandeep Sethi, Senior Advocate
with Mr. Anupam Varma, Mr. Nikhil
Sharma and Ms. S. Akshata, Advocates
for BSES.

Mr. Sacchin Poti, Senior Advocate with
Mr. Diwakar Bidhuri, Mr. Vinod
Bidhuri, Ms. Fardeen Khan, Ms. Ashna,
Ms. S. Shreya, Mr. Krishna, Mr.
Dushyant Bariya, Mr. Shashank and
Mr. Rishabh Rana, Advocates.

Ms. Shiva Lakshmi, Mr. Madhav Bajaj,
Ms. Katyayani Joshi and Ms. Esha
Kumar, Advocates.

Mr. Sanjay Katyal, Standing Counsel
with Ms. Ritika Bansal, Advocate for
DDA.

Mr. Anand Prakash, Standing Counsel
with Ms. Varsha Arya, Mr. Satbeer and
Mr. Sanjay, Advocates for MCD.

(5)



+ W.P.(C) 11214/2018, CM APPL. 44345/2022 & CM APPL. 44346/2022

COURT ON ITS OWN MOTION

.....Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate (Amicus Curiae) with Mr. Sanjeevi Seshadri, Mr. Sukrit Seth, Mr. Shreedhar Kale, Mr. Aditya Rajgopal and Ms. Radhika Yadav, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS.

.....Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Amit Tiwari, CGSC, Mr. Amit Gupta, Mr. Ayush Tanwar, Ms. Ayushi Srivastava, Mr. Arpan Narwal, Mr. R.R. Prabhat, Mr. Vinay Yadav, Mr. Shubham Sharma, Mr. Naman and Mr. Yash Wardhan Sharma, Advocates for ASI/UOI.

Ms. Kanika Agnihotri, Standing Counsel for DDA.

Mr. Anand Prakash, Standing Counsel with Ms. Varsha Arya, Mr. Satbeer and Mr. Sanjay, Advocates for MCD.

(6)

+ W.P.(C) 4809/2021 & CM APPL. 14835/2021

MR. SANDEEP BIDHURI

.....Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate (Amicus Curiae) with Mr. Sanjeevi Seshadri, Mr. Sukrit Seth, Mr. Shreedhar Kale, Mr. Aditya Rajgopal and Ms. Radhika Yadav, Advocates.

versus

ARCHAEOLOGICAL SURVEY OF INDIA & ORS.Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Amit Tiwari, CGSC, Mr. Amit Gupta, Mr. Ayush Tanwar, Ms. Ayushi Srivastava, Mr. Arpan Narwal, Mr. R.R. Prabhat, Mr. Vinay Yadav, Mr.



Shubham Sharma, Mr. Naman and Mr. Yash Wardhan Sharma, Advocates for ASI/UOI.

Mr. Sanjay Katyal, Standing Counsel with Ms. Ritika Bansal, Advocate for DDA.

Mr. Anand Prakash, Standing Counsel with Ms. Varsha Arya, Mr. Satbeer and Mr. Sanjay, Advocates for MCD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

24.09.2025

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1. In terms of our earlier order passed on 15.09.2025, the demarcation report based on the demarcation conducted under our order has been served upon learned counsel for the parties. Learned counsel representing the Archaeological Survey of India (ASI), Mr. Amit Tiwari states that from the demarcation, certain facts are clear, such as (i) there does not appear to be any encroachment inside the monument, (ii) outside the monument and within the boundary wall of the monument, there does exist encroachments and (iii) even outside the boundary, encroachments on the land which was handed over to ASI in the year 1993 are in existence.

2. Admittedly, Tughlakabad Fort is a protected monument within the meaning of the said term in the Ancient Monuments and Archaeological Sites and Remains Act, 1958. Section 20A of the 1958 Act defines the 'prohibited area' to mean an area extending to a distance of 100 mtrs. in all directions from the protected monument. Sub-Section 2 of Section 20A provides that no person other than an Archaeological Officer shall carry out any construction in any prohibited area. Sub-Section (3) however, provides that in a situation where Central Government or the Director General of ASI is satisfied that it is necessary or expedient to carry out certain public work or any public project,



which is essential to public, or such work or project does not have any substantial adverse impact on the preservation, security and safety etc., of the monument, in exceptional circumstances and also having regard to public interest, may permit such public work or project essential to public or other constructions which may be carried out in the prohibited area. Thus, it appears that there is complete prohibition on construction in a prohibited area in terms of sub-Section (2) of Section 20A, of the 1958 Act. However, certain public work or project is permitted, when it becomes extremely necessary to take such work or project in public interest.

3. Section 20B provides that every area extending to a distance of 200 mtrs. in all directions beginning at the limit of prohibited area in respect of every ancient monument or archaeological sites or remains, which is declared as of national importance under Section 3 or 4 shall be the “regulated area”. Sub-Section (1) of Section 20C provides that any person who owns any building or structure, which existed in a prohibited area before 16.06.1992, or which had been subsequently constructed with the approval of the Director General of ASI and desires to carry out any repair or renovation of such building, will have to make an application to the competent authority for carrying out such repair or renovation. Sub-Section (2) of Section 20C provides that any person who owns or possesses any structure or land in regulated area and desires to carry out any construction or reconstruction or repair or renovation of such building or structure on such land, will have to make an application to the competent authority seeking permission for carrying out such construction.

4. In violation of the aforesaid provisions of the Act, unfortunately, various encroachments have taken place since long and people from lower strata of the society have been residing there. Though, no exact estimate is available as to the number of families residing in such area by encroaching and putting up



small dwelling units in the shape of shabby shanties, however, the number is substantial. It is also on record that apart from these shanties, some of the illegal occupants and encroachers of the land, which is otherwise prohibited under the 1958 Act, have constructed even *pucca* proper houses.

5. It is not that for the first time in 1958 that the Parliament provided a legislative framework for preserving of ancient and historical monuments and archaeological sites and remains of national importance, but there has been a long history of such legislative measures and the purpose of such legislation is very clear, which is to protect the history and heritage. It appears that prior to the present enactment of 1958, provisions akin to the provisions contained in this Act, existed in the Ancient Monuments Preservation Act, 1904 and also the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951. The said enactments were made by the legislature of the day expressing the solemn desire and wish of the people of the Country to preserve their heritage and historical ethos. The Tughlakabad Fort is one such ancient monument which is of national importance, and reflects our historical ethos and heritage and therefore, needs to be preserved.

6. These encroachments/illegal constructions therefore will have to be removed, not only to ensure that the mandate of 1958 Act is followed but also to ensure that our historical heritage and ethos are preserved for the posterity. However, during the pendency of proceedings of this petition, on various occasions, various kind of helplessness has been expressed by the ASI so far as removal of encroachment is concerned. We may quote one such order passed by the Court on 24.11.2022, which reads as under:-

“1. The instant writ petitions pertain to rampant large-scale encroachments in around and within the historical Tughlaqabad Fort.

2. It is not in dispute that the Archaeological Survey of India (ASI) is



in complete control of the area in question. Since various Departments of the State were passing the burden on each other in the matter of removal of encroachments, this Court vide Order dated 17.05.2017 in W.P.(C) 1475/2001 constituted a Committee, comprising various Departments of the State, to survey the area and to take appropriate steps for removal of encroachments.

3. We are in the year 2022 and the learned Counsel appearing for the Archaeological Survey of India (ASI) has expressed his helplessness in removal of encroachments on account of non-cooperation of other Departments of the State.

4. By way of last indulgence, six weeks' time is granted to the Respondents as well as the Committee Members to file a Status Report in the matter.

5. Learned Counsel appearing for MCD has also joined the proceedings through Video Conferencing and submitted that the MCD shall be providing all logistic support to Archaeological Survey of India (ASI).

6. The Counsel for the Respondents also assured this Court that they will also be co-operating in the matter. Learned Counsel appearing for BSES has also assured this Court that it will co-operate in the matter by disconnecting electricity connection before removal of the encroachments.

7. List on 16.01.2023.

8. It is made clear that non-compliance of the Order shall be viewed seriously and this Court shall be passing necessary Orders directing the personal appearance of Head of the Departments and Committee Members to explain the reason as to why the encroachments are not being removed.”

7. The residents in the area, though unlawfully, have been residing since long, maybe with the connivance of the authorities and therefore, it appears that the matter at some stage was taken up by the Central Bureau of Investigation (CBI). Nothing is known as to the outcome of the said issue, which was taken up by CBI. We thus require Mr. Rajesh Kumar, learned counsel representing the CBI, who on our request has put in appearance on behalf of the CBI to seek



instructions and file a detailed status report within two weeks as to investigations so far, and also the outcome of the proceedings which are said to have been initiated by the CBI.

8. We have already observed above the need to make the entire area encroachment free, if we have to follow the legislative mandate expressed in the 1958 Act to preserve the monument. However, such removal shall entail a human problem as well, which also needs to be solved by all the authorities including Government of India, the State Government, the Archaeological Survey of India and other related bodies such as Municipal Bodies. The issues in this matter are to be monitored by the Court under an order dated 04.02.2016 passed by the Hon'ble Supreme Court where the proceedings of this writ petition was pending earlier. The relevant portion of which reads as under:-

“11) 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.

*(d) Repeated order 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, 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.***

*12) 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.***

(Emphasis Supplied)

9. Having given our anxious consideration to overall facts and



circumstances and to mitigate the human problem which has arisen in the matter on account of urgent need for removal of the encroachments and illegal constructions, we are of the opinion that authorities of the Central Government, State Government, ASI, DDA, MCD and other related bodies should cause a survey of the area and devise a joint policy decision not only for removal of illegal encroachments and constructions but also to rehabilitate those who may be required to be uprooted and displaced.

10. We thus direct that the following may be impleaded as party respondents:

- (i) Union of India through Secretary, Ministry of Housing and Urban Affairs;
- (ii) The GNCTD through Secretary, Department of Housing and Urban Development;
- (iii) Municipal Corporation of Delhi; and
- (iv) Commissioner of Police, Delhi.

11. Issue notice to the newly impleaded respondents.

12. Mr. Amit Tiwari, learned counsel accepts notice on behalf of Union of India and ASI. Mr. Sameer Vashisht, learned counsel appears and accepts notice for GNCTD. Whereas, Mr. Sanjay Katyal, learned counsel appears and accepts notice for MCD.

13. For deliberations and appropriate decision on the issues as culled out in para 9 of this order, the following Committee is constituted:-

- i. Secretary, Department of Housing and Urban Affairs, Government of India- Chairman.
- ii. Director General, Archaeological Survey of India-Member.
- iii. Secretary, Department of Housing and Urban Development, GNCTD-Member.
- iv. Commissioner, Municipal Corporation of Delhi-Member.



- v. Commissioner, Delhi Police-Member.
- vi. Vice-Chairman, Delhi Development Authority-Member.
- vii. Divisional Commissioner, Revenue Department, GNCTD-Member.
- viii. Any other person/officer/body which this Committee deems fit may be co-opted.

14. The aforesaid Committee while deliberating issues and suggesting policy decision shall also consider various Government Schemes for rehabilitation including the Pradhan Mantri - Unauthorised Colonies in Delhi Awas Yojana as well.

15. We express our hope and repose trust that the Committee, as formed above, shall take into account all the relevant aspects and take appropriate decision for removal of unauthorized occupants and constructions as also rehabilitation of the residents, who may be found eligible in terms of the policy decision which may be taken in this regard. We further direct that all other authorities of Delhi Government as also the Government of India shall fully cooperate with the Committee and whenever required, shall provide the relevant material.

16. Mr. Sandeep Sethi, learned Senior Counsel representing the BSES Rajdhani Limited has stated that the ASI has put a blanket ban on grant of new electricity connections in the area and, therefore, after the demarcation, the electricity distributing agency may be permitted to process the applications they receive for providing new electricity connection. He has stated that the blanket ban on permitting new electricity connection does not serve any purpose; rather it encourages use of illegal connections and also leads to safety issues to the employees of the agency.

17. Our attention has been drawn by Mr. Sethi to communication dated 23.07.2019 made by Superintending Archaeologist to the Deputy General



Manager (Business), BSES Rajdhani Power Limited, wherein it has been stated that in view of the order of the Court dated 23.01.2019, the ASI is unable to permit any new electricity connection in the area until and unless a fresh map with clear demarcation of Lal Dora area as well as 2661 bighas of land can be made available from the revenue department of GNCTD. He has stated now that a demarcation has been done and the fresh map is available, BSES Rajdhani Limited may be permitted to process the applications for new connections.

18. The said communication also mentions that the ASI is not in a position to give any No Objection Certificate (NOC) for new electricity connection until the Court decides this petition.

19. Having noticed the concerns raised by Mr. Sethi, we permit the BSES Rajdhani Limited to approach the Director General of ASI, who on consideration of the relevant aspects of the matter, shall take a decision for relaxing the said ban. The said decision shall be taken within a fortnight from today and be communicated to BSES Rajdhani Limited forthwith.

20. By the next date of listing, the Chairman of the Committee formed under this order shall file an affidavit giving details of the progress, which might be made during this interregnum for ensuring compliance of this Order.

21. List on 03.12.2025.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

SEPTEMBER 24, 2025

yrj/sr