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BEFORE THE HON'BLE HIGH COURT OF JUDICATURE AT ALLHABAD

CIVIL MISC. WRIT PETITION NO. 31229/2005

(Under Article 226 of the Constitution of India)

IN THE MATTER OF:

KAUTILYA SOCIETY AND ORS. …PETITIONERS

VERSUS

STATE OF UTTAR PRADESH & ORS. …RESPONDENTS

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

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IN

SUBMISSIONS/SYNOPSIS

ON BEHALF OF

RESPONDENT NOS. 6 & 7

IN

CIVIL MISC. WRIT PETITON NO. 31229 OF 2005

(Under Article 226 of the Constitution of India)

DISTRICT : VARANASI

Kautilya Society and others --------Petitioners

Versus

State of Uttar Pradesh and others ------Respondents

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Submitted by :

(Ajay Kumar Singh)
Advocate,
Counsel for the Respondent Nos. 6 & 7

Date : April _____, 2014

SYNOPSIS

24-5-1995 — Respondent nos. 6 to 8 purchased Darbhanga Palace bearing Municipal No. D-20/17A, 17B, 17C and 16, Munshi Ghat, Varanasi.

.....Contesting respondents submitted plan for restoration, reconstruction and renovation before the V.D.A. for Heritage Hotel at Darbhanga Palace. The said plan was in two volumes, one gate exact and minute details of Darbhanga Palace, which was existing at the time of purchase ad the second volume of the building, cost, details of restoration, reconstruction and renovation of building to resurrect the Darbhanga Palace.

26.4.1997 **(Encl: -1)** — Answering Respondents deposited Rs. 65,000 through receipt No. 326/49 as directed by VDA in pursuance of report of Jal Nigam, Varanasi with regard to Sewer Line Charge.

26.4.97 **(Encl:2)** — V.D.A. after examining matter in detail and after getting approval from INTACH had sanctioned plan for construction or re-construction of Heritage Hotel as per plan.

30-9-2000 — Government Order was issued enhancing the period for permission to raise construction from 3 years to 5 years.

13.2.2001 **(Encl:3)** — Notice by VDA to stop work

19-2-01 **(Encl :4)** — Reply on behalf of contesting respondent to aforesaid notice of VDA dated 13-2-2001 request to set aside notice and for permission to start construction as per sanctioned plan.

27.2.01 **Encl :5** — Order of Vice Chairman, Varanasi Development Authority, Varanasi making sanction plant dated 26-4-1997 ineffective in view of Government Order dated 31-7-2000 and not on the basis of reply of answering respondents dated 10-2-2001 submitted in response to notice dated 13-2-2001.

3.3.2001 **Encl :6** — Representation on behalf of contesting respondents to V.C. VDA, Varanasi to issue order for start of work mentioning that Government Order is not applicable.

20-4-01 **Encl: 7** — Representation by answering respondents to revive the sanctioned plan and map, made ineffective on 27-2-2001.

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24-4-2001 **Encl:8**	Representation by answering respondents to make effective sanctioned map in view of Government Order dated 11-4-2001 relaxing prohibition of construction etc. within 200 Meters of river Ganges.
26-5-2001/ 30-5-2001 **Encl : 9**	Intimation by Incharge Engineer (Building) with regard to revival of the sanctioned plan dated 26-4-1997 as per approval of V.C., VDA, Varanasi dated 26-5-2001 in view of Government Order dated 11-4-2001.
30.6.2001 **Encl:10**	Notice by VDA to stop work Letter of answering respondents to VC, VDA enclosing photographs showing all the existing salient feature of the architectural value of the Bye-laws.
3-7-2001 **Encl :11**	Letter of answering respondents to VC, VDA enclosing photographs showing all the existing salient feature of the architectural value of the Darbhanga Palace.
9-7-2001 **Encl :12**	Representation by answering respondents to look into the matter, giving detailed facts so that building of heritage importance could be brought back to its original grander.
2-8-2001 **Encl :13**	Letter by VDA asking the answering respondents to submit five copies of compounding plan in response to notice dated 30-6-2001 for taking final decision.
4-8-2001 **Encl :14**	Representation by answering respondents requesting for permission to continue renovation/restoration work within guidelines of INTACH and Sanctioned Plan.
10.8.2001 **Encl _15**	Letter by V.D.A. to stop construction and to submit revised plan.
20-8-2001 **Encl -16**	Reply by answering respondents to letter of VDA dated 10-8-2001 intimating that INTACH has requested to make inspection of building and give their expert report.
20-8-2001 **Encl -17**	State Government directed VDA to take appropriate action in the matter after getting matter inspected from INTACH . Subsequently VDA send some letter to INTACH requesting them to make inspection at every stage and Development Authority may be properly advised but no decision was being taken as such.
2001	Contesting respondents filed Civil Misc. Writ Petition No. 43661

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of 2001, Apoorva Kumar and others Vs. State of U.P. and others to implement Order dated 20-8-2001.

13-5-2002
Encl -18

Aforesaid writ petition was disposed of by the Hon'ble Court with the direction to Vice Chairman, Varanasi Development Authority to ensure that final decision in the matter in question be taken within a period not later than one month fro the date of production of the certified copy of the order after affording opportunity of hearing to the answering respondentr by speaking order.

1-7-2003

As per the instructions given by the Varanasi Development Authority, Varanasi, Professor A.G. Krishna Menon, renewed Conservation Architect represented by INTACH, 71, Lodhi Estate, New Delhi after examining and inspecting the Darbhanga Palace and after perusing the plan submitted by the contesting respondents in two volumes, submitted its report dated 1-7-2003. Even prior to that INTACH Submitted reports dated 11.4.1996, 10.7.1996, 23/ 24.08.2001 /6.09. 2001, 10.12.2002/08.01.2003.

From a bare perusal of the aforesaid report dated -1.07.2003 submitted by the INTACH, the confusion created in the restoration, reconstruction and renovation of Darbhanga Palace has been totally clear. The report categorically declares that the **Palace is not a Protected Building** within the meaning of Act No. 24 of 1958. However, it is suggested that while making essential restoration, conservation and renovation activities, the ambiance of the building towards the Ghat should not be compromised even for the adoptive use of the building. It further suggested that necessary construction and renovation activities can be made instead the building had completely collapsed but efforts should be made to maintain the shape of the building, giving ancient character so that its original shape should be restored to the maximum.

It appears that by resolution dated 4.1.1997, the Varanasi Development Authority had resolved that before sanctioning plan person seeking sanction of plan should consult/obtain "No Objection Certificate" from the following authorities-

a) Fire Fighting Department;
b) Nazul Department.
c) Nagar Nigam (Sewer and drainage)

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d) Convenor INTACH
e) Ganges Action Plan/Jal Nigam.
f) District Magistrate's office.
It appears that it is because of this resolution, Varnaasi Development Authority consulted the INTACH and obtained "No Objection Certificate" from above departments before sanctioning the plan.

25.6.03 **Encl:19** — Letter by VC, VDA, Varanasi to answering respondents to stop construction in view of letter of Senior Assistant Archeologist, ASI, Varanasi and to inform undersigned after obtaining NOC from ASI.

19-9-2003 **Encl-20** — After coming to know about requirement /permission of NOC from ASI, answering respondents filed application dated 19-9-2003 for grant of permission/NOC before ASI but no decision was being taken as such.

2004 — Answering respondents filed Second Writ Petition No. 16102 of 2004, Apoorva Kumar Vs. Union of India and others which was disposed of by Hon'ble Court with direction to the Director General, ASI, New Delhi to pass appropriate orders on the application dated 19-9-2003 within two months, after hearing, petitioners of that writ petition and VDA, Varanasi.

20-7-2004 **Encl-21** — ASI granted NOC in Form-VIII under Rule 34 of The Ancient Monuments and Archeological Sites and Remains Rules, 1958 for Restoration, Conversation and Renovation of the dilapidated building (Darbhanga Palace).

15-9-04 **Encl-22** — Letter by answering respondents requesting VDA to open seal of the premises and extend period of plan so that work could be resumed at the earliest giving all relevant facts including NOC dated 20-7-2004, issued by ASI.

20-1-2005 **Encl -23** — Letter by VDA to open the seal with condition of submitting compounding plan within a week and that no new construction shall be raised.

24-1-2005 **Encl-24** — Answering Respondents submitted compounding plan in two sets of three sheets each to Secretary VDA, Varanasi.

3-3-2005 Encl -24A — **Answering Respondents deposited the compounding fee to the** tune of Rs. 1,90,715/= for the minor internal variations and

replacement of back wall (which was done in consultation of INTACH), which was unsafe to bear building load , that are permissible under the VDA bylaws and only after this compounding fee along with other legal dues were deposited by the Respondent no.6 to 8, VDA vide Compounding order dated 03.03.2005 permitted the Respondent no. 6 to 8 to carry out the construction work. It is again important to note that majority of the Internal variations made in the Building are exempted under **Clause 3.1.1. of the Chapter 3 of the House Construction and Development bylaws** and no permission is required for the same and said plan was valid for five years.

24-3-2005
Encl-25

Commissioner/Chairman, VDA, Varanasi submitted report to Special Secretary, Avas Evam Shahari Niyojan, Lucknow in response to his letter dated 21-3-2005 annexing therewith inspection report regarding Darbhanga Palace mentioning detailed facts including that answering respondents have got contravened provisions relating to the Act, 1958 and rules framed there under.

8-4-05
Encl-26

Letter by Conservation Assistant Office of ASI, Varanasi requesting Incharge Police Station Dashashwamedh to lodge F.I.R.

16.4.2005
Encl-27

Order of V.D.A to stop construction due to objection by ASI

2005

Answering respondents filed Civil Misc. Writ Petition No. 31340 of 2005, Apoorva Kumar and others Vs. State of U.P. to challenge aforesaid letter dated 8-4-2005 and for other reliefs.

6-7-2005
Encl-28

That after hearing the counsel for the answering respondents, Hon'ble High Court was pleased to dispose of the Writ Petition directing the Director General, Archeological Survey of India to examine the issue by either inspecting the building himself or by some responsible officers of his choice. It has also been observed by the Hon'ble Court that a report then may be prepared after affording an opportunity to the answering respondents and appropriate orders may be passed within a period of four weeks. It was also left open to the Director General, Archeological Survey of India to hear any other person on behalf of the State of Uttar Pradesh. However, for a period of four weeks, the order impugned in the writ petition dated 8-4-2005, issued by conservation Assistant, Sub Circle Sarnath,

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Varanasi has been kept in abeyance and the status quo as on date has been made in respect of the disputed property.

19-7-2005 — Representation by answering respondents (Petitioners of writ petition) before Director General, ASI, New Delhi for compliance of judgment and order dated 6-7-2005, passed by Hon'ble Court.

30-9-2005
Encl-29 — Superintending Archeologist, ASI Patna Circle Patna issued ex-parte order directing answering respondents to remove construction allegedly made in contravention of the terms of the license.

2005 — Answering respondents filed Fourth Writ Petitoin No. 71449 of 2005, Apoorva Kumar Vs. Union of India and others to quash aforesaid order of ASI dated 30-9-2005.

24.11.05 — Hon'ble Court directed parties to maintain status quo till 30-11-2005 which was extended from time to time.

12.12.2005 — Hon'ble Court directed that while demolition will not take place but no further construction will be made.

18.1.2008
Encl-30 — After exchange of affidavits between the parties Hon'ble Court was pleased to allow Writ Petition No. 71449 of 2005, relevant portion whereof is quoted below:-

".....Unless, of course, it is disturbing in any way the monument, permission for remodeling or construction, if any of a private house is the domain of concerned development authority or the Municipal Commissioner.....The authorities, in the garb of an inspection under an order dated 6th July, 2005 passed by a Division Bench of this Court in writ petiton No. 31340 of 2005 (Apoorva Kumar and others Vs. State of U.P. and others), wanted to intervene in respect of remodeling or reconstruction of the structure of the building in the name of regulatory power within 200 meters over and above 100 meters i.e. prohibitory area. Surprisingly, the report which has been furnished by such authority to the petitioners as annexed with the writ petition, speaks that on the eastern side and rear side the building is not prohibiting anything. So far as northern side is concerned, the same view has been observed. So far as western side is concerned, the report is silent. Therefore, it can be safely presumed that there is nothing to say with regard to western side of the building since all the buildings of the similar heights, if not higher, stand on the western side of the river Ganges in between these two premises. From the architectural report, it appears that

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by remodeling or restructure, it has become little lower than the original height.....The authority appears to have committed mistake by proceeding as if "Jai Singh Observatory" was not the monument but " Darbhanga Palace", a private house, is the monument.

Therefore, in totality, we are of the view that the order of demolition or for any purpose interfering with the cause of construction by such authority, should be quashed and is accordingly quashed. As a result whereof, the petitoners will be entitled to remodel or restructure the house with the appropriate sanction of Varanasi Development Authority, and/or Municipal Corporation whatsoever is competent to do so, if not already obtained.....

30-1-2008
Encl:31

Representation by answering respondents to VC, VDA, Varanasi annexing therewith judgment and order dated 18-1-2008, passed in the Writ Petition No. 71449 of 2005.

5-5-2008
Encl :32

Another representation by answering respondents to VC, VDA, Secretary VDA and OSD, VDA for compliance of judgment and order dated 18-1-2018, passed by Hon'ble Court in the matter .

4-6-08
7.7.08/10.7.08
Encl 33

On 4-6-2008, Vice Chairman, VDA, Varanasi, Engineers and other authorities of VDA, Varanasi inspected the 'Darbhanga Palace' and after being fully satisfied the Vice Chairman, VDA, Varanasi recalled notice No. 14/05 dated 16.4.2005, vide its order dated 7-7-2008 and contesting respondent have been directed to make construction as per sanctioned plan and map for Hotel vide sanctioned map dated 3-3-2005 with direction to Regional Assistant Engineer to make necessary inspection from time to time.

28.3.12

On the request of answering respondents, authorities of INTACH, Varanasi Chapter, Banaras Hindu University, Varanasi have been regularly visiting house of answering respondents and monitored the restoration, conservation and renovation work being done over there. Final inspection was made on 25-3-2012, after completion of all the restoration work in the building and report dated 28.3.2012 was also submitted by Convener, INTACH, Varanasi Chapter, Banaras Hindu University, Varanasi to Vide Chairman, Varanasi Development Authority, confirming that :-

a) No change in the façade of the building facing to the river and it is at its Original Form
Left side Burji facing to river had fallen down, has been

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restored to its original shape

b) Wherever walls had collapsed and/or needed strengthening or new construction have been built with stone cladding in order to give its original appearance.

c) Inside the building of stone carving and restoration work have been done as per approved norms and extraction of INTACH for adoptive reuse of the building. In totality restoration work carried out in Darbhanga Palace is to the satisfaction and norms of INTACH. It has set a model for restoring heritage building.

The answering respondents sent notice in writing of such completion to the authority of the VDA, Varanasi who after making inspection, found entire restoration, conservation and renovation work in accordance with sanctioned plan and map, whereupon Secretary, Varanasi Development Authority, Varanasi issued completion Certificate dated 2-4-2012 to answering respondents vide Patrank No. 35 on 3-8-2012 under section 15-A(2) of U.P. Urban Planning and Development Act, 1973.

2.4.12/3.8.12

Encl :- 14

Encl- 1

वाराणसी विकास प्राधिकरण, वाराणसी

प्रतिष्ठा में :-

श्री महेन्द्र प्रसाद गाह, स्टार्नी,
म0नं036/8, संकठमोचन मार्ग,
वाराणसी ।

पत्रांक 106 /वि0प्रा0/मा0नि0/97-98 दिनांक 25.4.97

विषय : आ0नं0 11513 मौजा रहरवाह परगनेहवा अमानत पर प्रस्तावित रहिशन आल्ट्रेशन मानचित्र की स्वीकृति के सम्बन्ध में ।

महोदय,

उपर्युक्त विषयक आप द्वारा प्रस्तुत मानचित्र जो दरभंगा हाउस के रहिशन आल्ट्रेशन के सम्बन्ध में है, सूचित करना है कि उपाध्यक्ष महोदय द्वारा दिनांक 24.4.97 को मानचित्र की स्वीकृति प्रदान कर दी है । अतः आप सीवर लाइन को छूट करने हेतु रू0 65,000.00 (रूपया पैसठ हजार मात्र) तथा मलपातशुल्क रू0914.00 (नौ सौ चौदह रूपया) कुल रू065,914.00 रू0 प्राधिकरण कोष में जमा करने का कष्ट करें ताकि मानचित्र निर्गत किया जा सके ।

भवदीय,

(जि0एन0कौड़ा)
नगर नियोजक

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वाराणसी विकास प्राधिकरण

पुस्तक संख्या 326 रसीद संख्या

रुपया 65914=00 प्रयोजन जिस प्रयोजन के लिये जमा करना है

श्री अरुण कुमार वगैरह एटावी श्री भैरव प्रसाद वगैरह

रुपये (शब्दों में) पैंसठ हजार नौ सौ चौदह मात्र

के नक्शे भवन/प्लाट जि. 65000=00

सेवा शु. 914=00

जि. 65914=00

अवधि के लिए

मांग/बिल संख्या 4/96/हरदी/वि.प्रा.

दिनांक 26/4/97

दिनांक

रु. 65914=00

रसीद सं. 15 3

सेवा शुल्क रसीद

जमा किया 20/6-97

से 20/7 तक

प्राप्तकर्ता का नाम एवं

पद

हस्ताक्षर

Encl-2

वाराणसी विकास क्षेत्र, वाराणसी

अनुमति-पत्र

सं०.26...../न० अ० वि० दिनांक 26.4.97

गृह निर्माणार्थ अनुमति-पत्र

यह अनुमति केवल उ० प्र० नगर योजना और विकास अधिनियम १९७३ की धारा १४ के अन्तर्गत दी जाती है, किन्तु इसका अर्थ यह न समझा जाना चाहिये कि उस भूमि के सम्बन्ध में जिस पर मकान बने इस किसी प्रकार या किसी स्थानीय निकाय या स्थानीय अधिकारी या व्यक्ति अथवा फर्म के मालिकाना अधिकारों पर किसी का कोई असर पड़ेगा अर्थात यह अनुमति किसी के मिल्कियत या स्वामित्व के अधिकारों के विरुद्ध कोई प्रभाव न रखेगी। श्री भुवन प्रकाश अनुप कुमार नरेश कुमार, पंकज कुमार S/O श्री [illegible] कुमार

निम्नलिखित प्रतिबन्धों के आधीन यह अनुमति दी जाती है कि श्रीमती/श्री..... पुत्र/पुत्री/पति का नाम श्री [illegible] निवासी [illegible] जो मकान नं० [illegible] मोहल्ला [illegible] में बनाने में दर्शित स्थान पर जो प्रार्थना पत्र के साथ प्रस्तुत किये गये हैं, उपाध्यक्ष के चिन्हित भवन चित्र अनुसार निर्माण अथवा पुनः निर्माण किया जाय। [illegible]

मुहर

दिनांक 26.4..... १९९ 7

उपाध्यक्ष
विकास क्षेत्र
वाराणसी

नोट :—१—यह स्वीकृति पत्र केवल तीन वर्ष की अवधि के लिये है। यदि इमारत आज्ञानुकूल नहीं बनी तो उपाध्यक्ष द्वारा उसे गिरवाया जा सकता है अथवा ऐसे रूप में परिवर्तित किया जा सकता है जो कि समुचित समझा जावे। इसका पूर्ण व्यय का भार प्रार्थी पर होगा। यदि कोई इमारत बिना उपाध्यक्ष की अनुमति प्राप्त किये निर्मित अथवा पुनः निर्मित होगा तो उसके निर्माणकर्ता को दण्ड दिया जावेगा अथवा इस प्रकार के अवैधानिक इमारत को उपाध्यक्ष द्वारा हटवा दिया जावेगा। और उसके हटाने के खर्च का भार उस इमारत बनाने वाले से वसूल किया जावेगा।

२—इस अनुमति पत्र में सड़क, रेलवे या नाली पर बढ़ाकर प्रोजेक्शन जैसे कि पोर्टिको, बारजा; छोड़ा, कोढ़ी, छाँव नये अथवा पुराने निर्माण को छोड़कर उस जगह फिर से नये निर्माण की स्वीकृति चाहे उसके साथ नक्शे में दिखाई भी हो, नहीं प्रदान की जावेगी। इन निर्माणों के लिए प्राधिकरण अधिनियम की धारा २९३ के अनुसार अनुमति प्राप्त करना होगा।

३—मकान निर्माण से यदि नाली सड़क की पटरी अथवा सड़क या नाली के किसी भाग [जो मान के अथवाड़े खिड़वाड़ अथवा उसके आकार के कारण डक की गई हो] को हानि पहुंचे तो यह गृह स्वामी को गृह तैयार हो जाने पर दिन के भीतर अथवा यदि प्राधिकरण ने एक लिखित सूचना द्वारा शीघ्र कहा हो तो पहिले उसे अपने खर्च से मरम्मत कराकर पूर्ववत् अवस्था में जिससे प्राधिकरण को सन्तोष हो जावे, में कर देना होगा।

४—गृह निर्माण के समय इसका भी ध्यान रखना होगा कि भारतीय विद्युत अधिनियम १९७३ [अधिनियम इलेक्ट्रिसिटी एक्ट के नियम १९७० का उल्लंघन किसी दशा में न होना चाहिये। यदि उपाध्यक्ष की जानकारी में ऐसे मामले पाये गये तो वह निर्माण को रोक अथवा हटा सकता है।

५—प्रार्थी को नियमानुसार उपाध्यक्ष को मकान के पूर्ण हो जाने की सूचना मकान समय के भीतर पूर्ण होने के पश्चात् १५ दिन के अन्दर देना होगा। यदि सूचना दी गई तो यह समझा जायगा कि मकान पूर्ण हो गया।

६—यह अनुमति यदि किसी कारणवश नजूल, प्राधिकरण अथवा जमींदारी उन्मूलन के भूमि पर निर्माण हेतु दे दी गई हो तो वैध न मानी जायगी और प्राधिकरण को अधिकार होगा कि ऐसे भूमि पर निर्मित भवन आदि हटा दे जिसका कोई हर्जाना प्राधिकरण द्वारा देय न होगा। इसलिए भूमि स्वामी अपनी भूमि के सम्बन्ध में पूर्ण जानकारी प्राप्त करके तभी निर्माण कार्य प्रारम्भ करें।

७—यदि अविकसित क्षेत्र के हेतु किसी प्रकार अनुमति दे दी गई तो वह भी वैध अनुमति पत्र नहीं माना जावेगा तथा ऐसे निर्माण कार्य को विध्वंस कर दिया जावेगा जिसका कोई हर्जाना नहीं दिया जायगा।

एल० के० प्रिण्टर्स १०,०००-१२-९४

वाराणसी विकास प्राधिकरण
वाराणसी

(नोटिस, अन्तर्गत् धारा-२७ उत्तर प्रदेश नगर नियोजन एवं विकास अधिनियम १९७३)

संख्या — D 113/2009 नo३ग०(भ०) ९१८१/७८ वर्ष ई दिनांक 13/2/2009

13.2.2009

श्रीमान्/श्रीमती अशोक कुमार, विनोद कुमार, अरुण कुमार व मनोज कुमार
पुत्रगण श्री जगदीश कुमार
डी. 32/ि — कुरुक्षेत्र — वाराणसी

चूँकि आपने विकास प्राधिकरण की अनुज्ञा प्राप्त किये बिना जैसा कि उत्तर प्रदेश नगर नियोजन तथा विकास अधिनियम १९७३ की धारा-१४ के अन्तर्गत् अपेक्षित है, मुकाम ..... में स्थित भवन संख्या डी. 32/17 ..... का निर्माण कार्य प्रारम्भ किया है/कर रहे हैं/पूर्ण कर लिया है।

मुकाम पर लिंटर (पीलिंथ) तक कैन्टीन के हिस्से में पेशाब घर के पुनः ढलाई के निर्माण हेतु सेटरिंग कार्य कराया जा रहा है।

अतः अपेक्षित है कि आप दिनांक 19-2-2009 को 3:00 बजे विकास प्राधिकरण कार्यालय में अधोहस्ताक्षरकर्ता के समक्ष उपस्थित होकर कारण बतलायें कि क्यों न आप द्वारा किये गये उपरोक्त निर्माण कार्य को हटा दिया जाय। आप स्वयं या आपके अधिकृत प्रतिनिधि उपस्थित हो सकते हैं।

नोट- उपरोक्त अधिनियम की धारा (१) की ओर आपका ध्यान आकर्षित किया जाता है जिसके अनुसार अधिनियम की १४ के अन्तर्गत् बिना अनुमति प्राप्त किये निर्माण कार्य करने पर दस हजार रूपये तक का अर्थदण्ड दिया जा सकता है और अपराध जारी रहने की दशा में अपराध के निमित्त प्रथम दोष सिद्ध के पश्चात् प्रत्येक ऐसे दिन के निमित्त जिसमें कि अपराध जारी रहे ५०० रूपये प्रतिदिन के हिसाब से और भी अर्थदण्ड लगाया जा सकता है।

हस्ताक्षरकर्ता .....

कृते उपाध्यक्ष
वाराणसी विकास प्राधिकरण
वाराणसी।

Encl- 3 ANNEXURE – 4B (1) 13

वाराणसी विकास प्राधिकरण, वाराणसी

(निर्माण कार्य बन्द करने की नोटिस)

नोटिस संख्या D112/2000 वार्ड दशाश्वमेध वि0प्रा0(भ0) दिनांक 13/12/2000

श्री/श्रीमती [illegible] पुत्र/पुत्री [illegible]

मकान नं0 D.20/17 दुर्गाकुण्ड वार्ड दशाश्वमेध

(नोटिस उत्तर प्रदेश नगर योजना और विकास अधिनियम १९७६ की धारा २८ के अन्तर्गत)

..... की रिपोर्ट से मुझे समाधान हो चुका है कि वाराणसी विकास प्राधिकरण क्षेत्रान्तर्गत दुर्गाकुण्ड मुहल्ले में स्थित भवन संख्या D.20/17 में अनुज्ञा प्राप्त किए बिना आपने [illegible] विकास कार्य प्रारम्भ किया है तथा कर रहे हैं। अतः आपको आदेशित किया जाता है कि आप उक्त मकान में किए जा रहे सभी विकास कार्य को अविलम्ब रोक दें। अवहेलना की दशा में आपके विरुद्ध उक्त अधिनियम की धारा-२८ की उप धारा (२) से (५) के अन्तर्गत कार्यवाही की जायेगी। एतद्द्वारा आपको चेतावनी दी जाती है कि आप द्वारा उक्त आदेशों के पालन न किए जाने की दशा में आपके विरुद्ध न्यायालय में परिवाद प्रस्तुत किया जायेगा। जिस पर दस हजार रूपया तक अर्थदण्ड लग सकता है और अपराध अनवरत रूप से होने की दशा में उक्त दण्ड के साथ-साथ जब तक आदेश का पालन नहीं किया जाता प्रत्येक ऐसे दिन के निमित्त जिसमें का अपराध जारी रहे रू0 २०० प्रतिदिन के हिसाब से और भी अर्थदण्ड लगाया जा सकता है।

विशेषाधिकारी .....

कृते उपाध्यक्ष
वाराणसी विकास प्राधिकरण
वाराणसी।

Encl-4

(2) 14

दिनांक :- फरवरी 19,2001

प्रेषक :-

महेन्द्र शाह,
कमला कुटीर,
संकट मोचन मार्ग,
वाराणसी ।

प्रतिनिधि-सर्व श्री अपूर्व कुमार, विवेक कुमार
अनूप कुमार एवं मनीष कुमार

सेवा में,

उपाध्यक्ष,
वाराणसी विकास प्राधिकरण,
वाराणसी ।

विषय :- भवन संख्या डी.20/17 ए, डी.20/17बी, डी.20/17सी, डी.20/16 प्लाट नं0 - 11513 मोहल्ला दरभंगा घाट, वाराणसी ।

महोदय,

उपरोक्त भवन के सम्बन्ध में विकास प्राधिकरण द्वारा निर्गत नोटिस धारा 27 एवं 28, उत्तर प्रदेश नगर नियोजन एवं विकास अधिनियम 1973 संख्या डी.113/2000/नोटिस, वाद दशाश्वमेघ, दिनांक 13.2.2001 के सन्दर्भ में विनम्रता के साथ आपके संज्ञान में निम्नलिखित तथ्य प्रस्तुत है :--

उपरोक्त भू खण्ड पर वाराणसी विकास प्राधिकरण के अनुमति पत्र संख्या 26/नo आ० वि० दिनांक 26.4.1997 (छाया प्रति संलग्न) द्वारा तीन वर्ष के लिए प्रस्तुत मानचित्र पर पुनरुद्धार एवं जीर्णोद्धार हेतु स्वीकृती प्रदान की गई थी । जिसकी अवधि शासनादेश दिनांक 30 सितम्बर 2000 (छाया प्रति संलग्न) के द्वारा पाँच वर्ष के लिए स्वतः अनुनन्य हो गई ।

इसी अनुमति के अन्तर्गत उपरोक्त अति जीर्ण किन्तु महत्वपूर्ण भवन के जीर्णोद्धार एवं पुनरुद्धार का कार्य स्वीकृत मानचित्र के अनुरूप प्रारम्भ किया गया जिसे आपकी नोटिस प्राप्त होने के पश्चात निर्देशानुसार अविलम्ब स्थगित कर दिया गया ।

इस सम्बन्ध में आपके संज्ञान में यह भी लाना आवश्यक है कि उपरोक्त मानचित्र की स्वीकृति वाराणसी विकास प्राधिकरण की बैठक दिनांक 4 जनवरी,1997 में पारित संकल्प संख्या-5 के सभी प्रविधानों के पूर्ण रूप से पूरे किये जाने के पश्चात ही दी गई थी ।

भारतीय सांस्कृतिक निधी (इन्टेक) के दिल्ली स्थित प्रधान कार्यालय के वास्तुविद अधिकारियों द्वारा स्थल निरीक्षण के पश्चात दी गई रिपोर्ट (छाया प्रति संलग्न) एवं इन्टेक उत्तर प्रदेश चाप्टर के वाराणसी के संयोजक के द्वारा अध्यक्ष वाराणसी विकास प्राधिकरण को दिये गये प्रतिवेदन (छाया प्रति संलग्न) को ध्यान में रखते हुए ही वाराणसी विकास प्राधिकरण द्वारा पुनरुद्धार एवं

क्रमशः....2/-

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जीर्णोद्धार के लिए मानचित्र स्वीकृत किया गया था । इन्टैक ने हमारे द्वारा तैयार कराये गये मानचित्र पर अपनी मोहर द्वारा उसकी संस्तुति भी की गई है जो कि आपके कार्यालय में उपलब्ध है ।

यहाँ यह भी स्पष्ट करना चाहूँगा कि भवन के केवल अतिजीर्ण भागों को हटाकर उसके स्थान पर पुनरूद्धार का कार्य किया जा रहा है । तथा निम्न तथ्यों का अनुपालन भी सुनिश्चित किया गया है ।

[1] गंगा की तरफ स्थित भवन के मूल स्वरूप को नष्ट नहीं किया जायेगा वरन् लगभग सौ वर्ष पूर्व काशी नरेश के संग्रहालय से प्राप्त चित्र के अनुसार [जिसकी प्रति मानचित्र की स्वीकृति के समय प्राधिकरण में दाखिल है] पुनः प्रतिष्ठापित किया जायेगा ।

[2] भवन के दक्षिण एवं उत्तर के बाह्य रूप को भी पूर्व की दशा में सुरक्षित पुर्नस्थापित रखा जायेगा ।

[3] भवन के अन्दर भी समस्त अलंकृत पत्थरों को उनके मूल रूप में ही रखा जायेगा ।

महोदय, विगत 70-80 वर्षों से भवन का उपयोग न होने तथा समय- समय पर आपेक्षित मरम्मत न होने के कारण इसकी स्थिति अत्यन्त जर्जर हो गई है, तथा पुनरूद्धार एवं जीर्णोद्धार के स्वीकृत मानचित्र के अनुरूप कार्य करते समय जो क्षतिग्रस्त हिस्सों को पुनरूद्धार के लिए हटाया गया है उस पर यदि शीघ्रता से कार्यवाही नहीं हुई तो यह किसी भी समय गिर सकता है । तथा जान माल की क्षति के साथ-साथ घाटों पर स्थित सुन्दर भवनों की श्रृंखला से एक कड़ी टूट जाने का भी भय है । इस वस्तु स्थिति का सत्यापन नगर के प्रतिष्ठित वास्तुविद श्री आर० सी० जैन से प्राप्त संलग्न सर्वेक्षण रिपोर्ट से भी स्पष्ट है ।

यहाँ यह भी लिखना उचित होगा कि इस भवन के स्वामीयों द्वारा मानचित्र की स्वीकृति के समय यह भी सुनिश्चित किया गया था कि भवन का सीवर गंगा में न जाये तथा इस हेतु जल निगम की संस्तुति के अनुसार 65,000/-रु० वर्तमान सीवर लाइन के विस्तार हेतु विकास प्राधिकरण में जमा भी कराया गया था ।

क्रमशः.....3

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(3)

भवन निर्माण की अनुमति प्राप्त होने के पश्चात वर्तमान भवन स्वामियों ने भवन की वर्तमान स्वरूप को सुरक्षित रखते हुए इस योजना पर दिल्ली के अनेको विशेषज्ञों द्वारा रिपोर्ट तैयार करायी गई , जिस पर बहुत बड़ा खर्च भी आया है, जिसे ऐसी अवस्था में यदि छोड़ दिया जायेगा तो भारी आर्थिक क्षति भी होगी ।

अतएव आपसे विनम्र पूर्वक अनुरोध है कि भवन की वर्तमान जर्जर अवस्था को दृष्टिगत रखते हुए उपरोक्त वर्णित नोटिसों को निरस्त कर हमें पुनरुद्धार एवं जीर्णोद्धार के कार्य को पुनः शीघ्र से शीघ्र आरम्भ करने दिया जाय । जिससे कि भवन में कोई और क्षति न हो तथा वाराणसी के घाटों की सुन्दरता में कोई कमी न आये । यदि आप उचित समझें तो स्थल निरीक्षण कर इस मॉन्युमेन्टल भवन की जर्जर वस्तुस्थिति से स्वयं आश्वस्त हो लें ।

आदर सहित ।

भवदीय,

(महेन्द्र शाह)
(प्रतिनिधि - अपूर्व कुमार, विवेक कुमार, अनूप कुमार एवं मनीष कुमार)

संलग्नक :-

1. छाया प्रति भवन निर्माण की अनुमति पत्र दिनांक 26.4.1997
2. छाया प्रति साशनादेश दिनांक 30, सितम्बर 2000.
3. छाया प्रति भारतीय सांस्कृतिक निधि की रिपोर्ट दिनांक 11.4.1996.
4. छाया प्रति संयोजक इन्टेक वाराणसी का प्रतिवेदन दिनांक 10.7.1996
5. वास्तुविद की सर्वेक्षण रिपोर्ट दिनांक 15.1.2001.

प्रतिलिपि सूचनार्थ प्रेषित :-

19/2/2001

1. संयोजक, भारतीय सांस्कृतिक निधि (इन्टेक) वाराणसी ।
2. [illegible]

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3/12/17

ENCLOSURE 1

वाराणसी विकास प्राधिकरण, वाराणसी

प्रतिष्ठा में,

तर्पन्ती अपर्व कुमार, विवेक कुमार, मनोज कुमार,
एटार्नी श्री महेन्द्र प्रताप शाह, डी020/16, डी020/17-ए, बी, सी,
दशाश्वमेध, वाराणसी ।

दिनांक

विषय : अराजी संख्या-11513, मौजा-शहरखास, भवन संख्या-डी020/16, डी020/17-ए, बी दशाश्वमेध, वाराणसी पर पूर्व स्वीकृत मानचित्र संख्या-डी04/96, होटल/विन्यास के सम्बन्ध में ।

-x-x-x-

महोदय,

उपर्युक्त विषयक सन्दर्भ में आपको सूचित किया जाता है कि शासनादेश संख्या-124/सी.एम./9-आ-3-2000-127/कैम्प/99 दिनांक 31 जुलाई, 2000 के अनुसार गंगा नदी के किनारे वे स्थानों का जो धार्मिक मान्यताओं से जुड़े हैं, जहाँ का स्वरूप प्रमुखतः तीर्थ है, जिसमे काशी सर्वोपरि है, वहाँ पर होटल भवन का निर्माण अनुमन्य नहीं है ।

अतः पूर्व स्वीकृत मानचित्र संख्या-4/96, होटल/विन्यास दिनांक 26-4-97 को उक्त शासनादेश के क्रम मे निष्प्रभावी करते हुये आपको निर्देशित किया जाता है कि स्थल पर किसी भी प्रकार का कोई निर्माण कार्य न करें ।

भवदीय,

(बी. एस. मुल्तार)
उ पा प्र अ

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(4) 19

MAHENDRA SHAH

Attorney to
Apoorva Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar

March 3, 2001

The Vice- Chairman,
Varanasi Vikas Pradhikaran
Varanasi

Sir,

Re:Restoration,Conservation & Reconstruction of Darbhanga Palace at Darbhanga Ghat, Varanasi according to the Sanctioned Plan.

At the outset I wish to thank you for giving us a patient hearing during our meeting along with Shri Arvind Kumar, on 28th February in your office on the above subject.

On the risk of repetition, I may again inform you that all construction work at the site remains stand-still after the receipt of your notice u/s 28 of the *UP Nagar Yojana and Vikas Adhiniyam 1973* on 14.2.2001to stop the work. All the facts have already been narrated in our reply petition dated 19.2.2001.

Though you agree that our Sanctioned Plan conforms to all the required conditions but due to a Government Order No.4503/9-3-1-1998 dated 16.11.1998 restricting *"any Activity within 200 meters from the river"* you are not in position to order the construction work to start again.

As explained to you, that the **building is approx. 200 years old and is in complete dilapidated condition and is unlikely to sustain the coming rainy season, unless thorough repairs and reconstruction is done immediately.** To substantiate the facts we had also shown you many photographs showing the present dangerous conditions of the building. You would agree that this palace is among the few landmark buildings on the world famous Ghats of Varanasi having not only Heritage but is also of Monumental importance.

Sir, unless immediate order is given to start the construction work, in the unfortunate circumstance of collapse of the building, we should not be held responsible for the loss of this beautiful landmark on the Ghats of Varanasi. In these circumstances, we would once again request you to kindly take immediate steps to issue an order for the start of restoration work, clarifying that the G.O. dated 16.11.1998 is not applicable for restoration, conservation & reconstruction of the existing old buildings within 200 meters of the river.

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Trust you will understand the need for urgent decision in the matter.

Thanking you,

Yours faithfully,

MAHENDRA SHAH
Attorney

Cc: 1. Shri P.L.Punia, IAS,
Principal Secretary, *Awaas*,
Lucknow .... For information & further to our meeting in this respect on 20.2.2001 in his office.

2. Shri Atul Kumar Gupta, IAS,
Secretary, *Awaas*,
Lucknow .... For information & further to our meeting in in his office on 21.2.2001.

Mr. B.K. Gupta

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दिनांकः २० अप्रैल, २००१

प्रेषकः-

महेन्द्र शाह,
कमला कुटीर,
संकट मोचन मार्ग,
वाराणसी।

प्रतिनिधि-सर्व श्री अपूर्व कुमार, विवेक कुमार,
अनूप कुमार एवं मनीष कुमार

सेवा में

उपाध्यक्ष,
वाराणसी विकास प्राधिकरण,
वाराणसी।

विषयः- भवन संख्या डी. 20/17 ए, डी. 20/17 बी, डी. 20/17 सी, डी.20/16
प्लाट नं० - 11513 मोहल्ला दरभंगा घाट, वाराणसी।

महोदय,

उपरोक्त भवन के सम्बन्ध में विकास प्राधिकरण द्वारा निर्गत नोटिस धारा 27 एवं 28, उत्तर प्रदेश नगर नियोजन एवं विकास अधिनियम 1973 संख्या डी. 113/2000/नोटिस, वार्ड दशाश्वमेध, दिनांक 13.2.2001 एवं आपके पत्र संख्या 4/96 दिनांक 27.2.2001 के सन्दर्भ में विनम्रता के साथ आपके संज्ञान में उत्तर प्रदेश शासन द्वारा प्रेषित आदेश संख्या 840/9-आ-3-2001-127 आप/99 दिनांक 11 अप्रैल 2001 की ओर आपका ध्यान आकर्षित करते हुए निवेदन करना है कि उत्तर प्रदेश शासन द्वारा अपने पूर्व में लिये गये निर्णय का शिथिलिकरण करते हुये गंगा तट से 200 मीटर तक स्थित प्राचीन भवनों के मरम्मत, रखरखाव व जीर्णोद्धार, कार्य करने की अनुमति प्रदान की है।

उपरोक्त शासनादेश के अन्तर्गत दिये गये सुझाव, "इन्टैक" के परामर्श के सन्दर्भ में अनुरोध करना है कि हमारे मानचित्रों पर 'इन्टैक' नई दिल्ली द्वारा अपनी पूर्व स्वीकृती भी प्रदान की जा चुकी है तथा पूर्व में अपने दिये गये प्रतिवेदनों के साथ संलग्न 'इन्टैक' नई दिल्ली एवं संयोजक इन्टैक वाराणसी अध्याय द्वारा दी गयी आख्या आपके सुलभ संदर्भ हेतु पुनः संलग्न की जा रही है।

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उपरोक्त शासनादेश में दिये गये सीवरेज सम्बन्धित निर्देशों के अन्तर्गत आपको सूचित करना है कि जल निगम वाराणसी की आज्ञा पर प्राधिकरण द्वारा निर्देशित सीवर लाइन चार्ज रु० 65 हजार भी हम लोगों द्वारा रसीद संख्या 326/49 दिनांक 26.4.1997 के द्वारा प्राधिकरण में जमा किया जा चुका है जिसकी छाया प्रतिलिपि संलग्न है।

अतएव आपसे अनुरोध है कि उपरोक्त शासनादेश को दृष्टिगत रखते हुये आपके पत्र दिनांक 27.2.2001 द्वारा हमारे स्वीकृत मानचित्र को 'निरप्रभावी' करने के अपने निर्णय को पुनः विचार करने के पश्चात 'प्रभावी' करने की कृपा करें, जिससे की जीर्णोद्धार एवं पुनरुद्धार का कार्य स्वीकृत मानचित्र के अनुरूप शीघ्र से शीघ्र प्रारम्भ किया जा सके।

आगामी वर्षा ऋतु शीघ्र आगमन को दृष्टिगत रखते हुये अविलम्ब जीर्णोद्धार का कार्य करना अनिवार्य है। जिससे की काशी के गंगा तट पर स्थित इस भव्य भवन की सुरक्षा हो सके और वाराणसी के घाटों का वैभव बना रह सके।

आपके शीघ्रता शीघ्र आदेश की अभिलाषा में - आदर सहित

भवदीय

प्रतिलिपिः- सर्व श्री अपूर्व कुमार, विवेक कुमार
अनूप कुमार एवं मनीष कुमार

संलग्नकः-
१. शासनादेश दिनांक 11.4.2001 की प्रतिलिपि
२. रसीद संख्या 326/49 की छाया प्रतिलिपि।
३. छाया प्रति INTACH की सदस्यता।

Encl-8 (6) 22

दिनांक: 24 अप्रैल, 2001

प्रेषक :-

महेन्द्र शाह,
कमला कुटीर,
संकट मोचन मार्ग,
वाराणसी ।

प्रतिनिधि- सर्व श्री अपूर्व कुमार, विवेक कुमार,
अनूप कुमार एवं मनीष कुमार

सेवा में,

उपाध्यक्ष,
वाराणसी विकास प्राधिकरण,
वाराणसी ।

विषय:-भवन संख्या डी. 20/17 ए,डी. 20/17 बी,डी.20/17सी,डी20/16
प्लाट नं0 - 11513 मोहल्ला दरभंगा घाट, वाराणसी

महोदय,

अपने पूर्व में दिए गए प्रतिवेदन दिनांक 20.4.2001 द्वारा आप से अनुरोध किया गया है कि आप द्वारा पूर्व में हमारे स्वीकृत मानचित्र को जिसके अन्तर्गत जीर्णोद्धार एवं पुनरूद्धार का कार्य किया जा रहा था, को आपके आदेश के अनुसार रोक दिया गया और हमारे स्वीकृत मान चित्र को जो 'निष्प्रभावी' किया गया है को अविलम्ब 'प्रभावी' करने की कृपा करें । इस परिपेक्ष में कृपया शासनादेश दिनांक 11.4.2001 का सन्दर्भ ले जिसके द्वारा राज्य सरकार ने गंगा तट से 200 मीटर के अन्तर्गत आने वाले ऐतिहासिक, सांस्कृतिक, प्राचीन, कलात्मक भवनों के जीर्णोद्धार के कार्यों को अनुमन्य किए जाने की अनुमति प्रदान की है ।

जैसा कि अपने पूर्व पत्रों में अनेकों बार विस्तृत जानकारी दी गई है- भवन वर्तमान में अत्यन्त जर्जर स्थिती में है और यदि वर्षा रितु के आगमन से पूर्व इसमें अविलम्ब

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रात/दिन लगातार कार्य प्रारम्भ नही किया गया - कोई भी हादसा हो सकता है जिसमे जान माल को भारी नुकसान के साथ - साथ काशी के घाटो की सुन्दरता को भी अपूर्णिय क्षति हो सकती है- जिसके लिए भवन स्वामियो को दोष नही दिया जा सकता । भवन की जर्जर स्थित का आप स्वयं निरीक्षण कर सकते है - आपके भवन की अत्यन्त जर्जर वस्तुस्थिती के सुलभ ज्ञान हेतु कुछ चित्र भी संलग्न किये जा रहे है ।

जैसा कि पूर्व पत्रो मे कहा जा चुका है शासनादेश दिनांक 11.4.2001 मे वर्णित 'इन्टैक' तथा सीवर सम्बन्धित प्रतिबन्धो हेतु समस्त आख्यायें एवं औपचारिकतायें पूरी कि जा चुकी है ।

अतएव आपसे पुनः विनम्र निवेदन है कि कृपया हमारे स्वीकृत मानचित्र को अविलम्ब 'प्रभावी' करने का निर्देश दे जिससे कार्य प्रारम्भ कर गंगा तट पर स्थित इस भव्य मान्यूमेन्टल भवन की सुरक्षा की जा सके ।

सधन्यवाद

भवनिष्ट

संलग्नक-चित्र

महेन्द्र शाह

प्रतिनिधि :- सर्व श्री अपूर्व कुमार, विवेक कुमार
अनूप कुमार एवं मनीष कुमार

प्रतिलिपि सूचनार्थ प्रेषित :-

1. श्री पी0एल0 पुनिया, प्रमुख सचिव एवं
आयुक्त आवास एवं नगर विकास, लखनऊ
2. श्री अतुल कुमार गुप्ता- सचिव, आवास, लखनऊ

Encl-9

(7) (5) 24

वाराणसी विकास प्राधिकरण, वाराणसी

प्रतिष्ठा में,

श्री अपूर्व कुमार [illegible] कुमार...पोरट ...
स्टानों श्री महेन्द्र प्रताप शाह,
डी-20/16, 17, सोनारपुरा ...
दशाश्वमेध, वाराणसी ।

पत्रांक 4/96 होटल/विन्यास

दिनांक 27.2.01

विषय : आरोजी संख्या 11513, मौजा शहर खास, भवन सं0-डी 20/16, डी20/17 स्वर्वोत्तम दशाश्वमेध वाराणसी पर पूर्व स्वीकृत मानचित्र संख्या 4/96-होटल/विन्यास के संबंध में।

महोदय,

कृपया उपर्युक्त विषयक इस कार्यालय लेख संख्या 4/96-होटल/विन्यास दिनांक 27.2.2001 का सन्दर्भ लेने का कष्ट करें, शासनादेश संख्या 840/9-आ-3-2001-127/वेम्र/99 दिनांक 11 अप्रैल, 2001 के क्रम में उपाध्यक्ष महोदय के अनुमोदन दिनांक 26.5.01 के अनुसार पूर्व स्वीकृत मानचित्र संख्या 4/96-होटल/विन्यास दिनांक 26.4.97 को पुनः तत्काल प्रभाव से प्रभावी किया जाता है ।

भवदीय

प्रभारी अभियन्ता (भवन)

ANNEXURE – 6H

Encl-10

(8) 25

वाराणसी विकास प्राधिकरण
वाराणसी

(नोटिस, अन्तर्गत धारा-२७ उत्तर प्रदेश नगर नियोजन एवं विकास अधिनियम १९७३)

संख्या D24/2001/नो0 भ0आ0(भ0) दिनांक 28.6.2001

श्रीमान्/श्रीमती अमृत कुमार, श्री विवेक कुमार गौरव
-डी 20/14 गुंडीघाट
-वाई - इन्द्रोखमेघर.

चूंकि आपने विकास प्राधिकरण की अनुज्ञा प्राप्त किये बिना जैसा कि उत्तर प्रदेश नगर नियोजन तथा विकास अधिनियम १९७३ की धारा-१४ के अन्तर्गत अपेक्षित है ..... मुहल्ले में स्थित भवन संख्या .....में निर्माण कार्य प्रारम्भ किया है/कर रहे हैं/पूर्ण कर लिया है।

अतः अपेक्षित है कि आप दिनांक 09/07/2001 को 3.00 बजे विकास प्राधिकरण कार्यालय में अधोहस्ताक्षरकर्ता के समक्ष उपस्थित होकर कारण बतलायें कि क्यों न आप द्वारा किये गये उपरोक्त निर्माण कार्य को हटा दिया जाय। आप स्वयं या आपके अधिकृत प्रतिनिधि उपस्थित हो सकते हैं।

नोट- उपरोक्त अधिनियम की धारा (१) की ओर आपका ध्यान आकर्षित किया जाता है जिसके अनुसार अधिनियम की १४ के अन्तर्गत बिना अनुमति प्राप्त किये निर्माण कार्य करने पर दस हजार रूपये तक का अर्थदण्ड दिया जा सकता है और अपराध जारी रहने की दशा में अपराध के निमित्त प्रथम दोष सिद्ध के पश्चात् प्रत्येक ऐसे दिन के निमित्त जिसमें कि अपराध जारी रहे ५०० रूपये प्रतिदिन के हिसाब से और भी अर्थदण्ड लगाया जा सकता है।

विशेषाधिकारी .....

कृते उपाध्यक्ष
वाराणसी विकास प्राधिकरण
वाराणसी।

वाराणसी विकास प्राधिकरण, वाराणसी

(निर्माण कार्य बन्द करने की नोटिस)

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नोटिस संख्या D24/2017 वार्ड 4710 वि0प्रा0(भ0) दिनांक 30/6/2017

श्री/श्रीमती गंगा प्रसाद, विनोद सिंह पुत्र/पुत्री .....

गोपाल

मकान नं0 डी 20/17 दुर्गाकुण्ड वार्ड ग्रामीण क्षेत्र

(नोटिस उत्तर प्रदेश नगर योजना और विकास अधिनियम १९७३ की धारा २८ के अन्तर्गत)

प्रवर्तन निरीक्षक की रिपोर्ट से मुझे समाधान हो चुका है कि वाराणसी विकास प्राधिकरण क्षेत्रान्तर्गत दुर्गाकुण्ड मुहल्ले में स्थित भवन संख्या डी 20/17 में अनुज्ञा प्राप्त किए बिना आपने स्वीकृत मानचित्र के विपरीत निर्माण प्रारम्भ किया है तथा कर रहे हैं। अतः आपको आदेशित किया जाता है कि आप उक्त मकान में किए जा रहे सभी विकास कार्य को अविलम्ब रोक दें। अवहेलना की दशा में आपके विरुद्ध उक्त अधिनियम की धारा-२८ की उप धारा (२) से (६) के अन्तर्गत कार्यवाही की जायेगी। एतद्द्वारा आपको चेतावनी दी जाती है कि आप द्वारा उक्त आदेशों के पालन न किए जाने की दशा में आपके विरुद्ध न्यायालय में परिवाद प्रस्तुत किया जायेगा। जिस पर दस हजार रूपया तक अर्थदण्ड लगा सकता है और अपराध अनवरत रूप से होने की दशा में उक्त दण्ड के साथ-साथ जब तक आदेश का पालन नहीं किया जाता प्रत्येक ऐसे दिन के निमित जिसमें का अपराध जारी रहे रू0 २०० प्रतिदिन के हिसाब से और भी अर्थदण्ड लगाया जा सकता है।

विशेषाधिकारी .....

कृते उपाध्यक्ष
वाराणसी विकास प्राधिकरण
वाराणसी।

Encl-11

(10)

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Attorney to
Apoorva Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar

July 3, 2001

The Vice - Chairman
Varanasi Vikas Pradhikaran
Varanasi

Madam,

Re: Restoration, Conservation & Reconstruction of Darbhanga Palace at Darbhanga Ghat, Varanasi as per the sanctioned plan by the VDA

At the outset we thank you most sincerely for giving a patient hearing to us during the meeting at your office on 2nd of July 2001 along with Shri Arvind Kumar and Shri R.C.Jain, Architect.

On the risk of repetition, I would like to mention again that this Palace situated on the Ghats of Banaras, is amongst the few landmark buildings of great heritage value as well as of monumental importance, increasing the beauty of the world famous river banks of Varanasi. Being approx. more than 150 years old, the building is in great-dilapidated condition requiring immediate restoration & reconstruction, which we are undertaking after getting the approval of VDA. Once the building is restored to its original grandeur it will not only add prestige to this ancient City but also will add value to the tourist map of Uttar Pradesh.

As desired by your goodself, I am enclosing herewith photographs showing all the existing salient features of architectural value of the Palace, which we once again confirm to maintain.

We once again thank you for your assurance of your co-operation which we trust we would continue to get in future also.

Thanking you,

Yours faithfully

MAHENDRA SHAH
Attorney

Enclo: Set of Photographs - 12 Nos.

Encl-12

(9)

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Attorney to
Apoorva Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar

July 9th 2001

The Vice - Chairman
Varanasi Vikas Pradhikaran
Varanasi

Madam,

Re: **Restoration, Conservation & Renovation of Darbhanga Palace at Darbhamga Ghat, Varanasi as per the sanctioned plan by the VDA**

I have to bring to your kind notice that for the past week or so, officers of the VDA have inspected the site. The verbal remarks given by them during the course of inspection was that the conservation work being undertaken by us is one of its kind and worth appreciating and that there is no encroachment on any side of the main building.

In this regard your attention is drawn to our letter dated 19.2.2001 alongwith enclosures, where by all facts were brought to the notice of the VDA, thereafter our sanctioned plan was made ***'Nishprabhavi'*** vide your letter dated 27.2.2001 because of GO 4503/9/[illegible]-1-1998 dated 16.11.1998 restricting *"any activity with in 200 meters from the river"* and the renovation & restoration work was stopped unfinished from that date.

After that a representation was made to the Government of UP, and another GO no. 840/9-[illegible]-3-2001-127-[illegible]/99 dated 11.4.2001 was issued and our sanctioned plan was again made ***'Prabhavi'*** vide VDA's letter dated 30.5.2001 with immediate effect.

Now we again wish to draw your kind attention to the following facts:

- The building structure is approx. 200 years old, constructed of *Lakhouri* bricks, mud/lime - mortar, stone *patias* (slabs) and wooden beams - which are at some places eaten by termite. The building is in dilapidated condition.

- From the time the plan was sanctioned and during the suspension of the half finished work for three months, because of the VDA's order, the building has still further deteriorated and many of its old slabs and *lakhouri* brick walls of mud/lime - *surkhi* layers have developed cracks at certain places.

- We are continuing the restoration and renovation work as per the sanctioned plan within the approved outline of building and as per the guidelines of the INTACH and as also given to you in writing, vide our letter dated 3.7.2001 along with

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photographs that no salient features including the stone carvings etc. would be damaged/destroyed but would be maintained or restored and preserved to its original condition.

- Due to development of cracks in the existing old walls or old existing slab falling down at some places, that we are forced to replace them at the same place and in same condition to withhold the building from further damage & to fulfil the technical requirement for structural safety & stability. The INTACH in their survey report have also permitted for such reconstruction/restoration work. The copy of this report is again being enclosed for your ready reference. This situation, in fact, was not visualized at the time of submission of the plans for sanction.

We have also shown you many photographs of the existing dilapidated condition of the building during our meeting on 2.7.2001 in your office. Under these circumstances, if our restoration/renovation work is again stopped half way & unfinished, we should not be held responsible for any damage to and collapse of this heritage monumental building as well as any danger to the life of the passers by.

We would therefore most earnestly request that looking to the dilapidated condition and the ongoing rainy season, we should be permitted to continue with the restoration and renovation work with in the guidelines of INTACH for which we are ready to deposit any due fee, if applicable. A report of a senior architect stating the dangerous condition of the building was also submitted along with our letter dated 19.2.2001 which is self explanatory, copy enclosed.

We would once again request your goodself to kindly look into the matter so that this monumental building of heritage importance could the brought back to its original grandeur.

Thanking you,

Yours faithfully,

Encl: ① Survey report of INTACH
② Report of Architect.

MAHENDRA SHAH
Attorney

Cc: 1. Shri Atul Kumar Gupta, IAS
Principal Secretary, Aawas, Lucknow ..... for information
Fax: 0522 - 204098

2. Shri P.L.Punia, IAS
Principal Secretary & Commissioner
Aawas *Evam* Nagar Vikas, Lucknow ..... for information
Fax: 0522 - 238920

3. Hon'ble Shri Lalji Tandon
Minister for Urban Development, Lucknw ..... for information

(1)

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I N T A C H

Mrs.Amita Baig,
Director General,
(Projects)
Architectural Heritage

Indian National Trust
for Art and Cultural Heritage

No.F.5-89/96-INTACH

April 11,1996.

Dear Mr Mahendra Shah

I am writing with reference to my visit to Darbanga Ghat alongwith our expert/concultant Prof.A.G.K.Menon. I have pleasure in enclosing herewith the report of Prof.A.G.K.Menon on the visit to the site and based on his review of the project drawings and proposals for the restoration and reuse of this heritage building.

We are pleased to confirm that (i) the proposal for restoration and reuse conform to accepted conservation norms applicable and (ii) the modifications introduced in the building will not in any way alter the historic fabric of the structure which are being undertaken for structural stability.

We believe that the restoration and reuse of the Darbanga Ghat will greatly enhance the value of Varanasi and will be a pioneering project in the upgradation of the Ghat buildings in Varanasi.

We wish you all success in this venture and hope that you will realise the project as early as possible.

Regards,

Yours sincerely,

Amita Baig

(Amita Baig)

Encls: As above

Mr.Mahendra Shah,
Director,
Great Value Hotels Limited,
Kamla Kutir,
Sankat Mochan Marg,
Varanasi-221005

Hiranmiyam, Near Humayun Tomb, Nizamuddin, New Delhi-110 013
Phones : 463 1818, 463 2267, 463 2269 Fax : 91-11-461 1290

Chairman : Pupul Jayakar

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N T A C H

Report on the Inspection of the Darbangha Ghat Building, Varanasi

An inspection was carried out of the proposal for the reuse of the Darbangha Ghat Building on April 8/9,1996 at the invitation of the owner, Shri Mahendra Shah by Mrs.Amita Baig and the conservation consultant Prof.A.G.K.Menon. The architect Shri Kishore Kapoor was present to explain the restoration/reuse scheme along with drawings.

At the outset it must be stated that the proposal to re-use such an important landmark on the Ghat is a step in the right direction. It will maintain the "ghat-scape" and bring in a positive conservation force into the development of the Ghats. Moreover, this building is in an area identified in the initial INTACH study of 1986 as containing the most valuable ensemble of elements of the heritage to be conserved and appropriately reused.

The building we understand is being converted into a Heritage Hotel with about 37 rooms and supporting public areas and service. We examined the proposal and agreed that the following steps to ensure the conservation point of view.

We were shown a photograph of the building taken about 80 years ago. This provides an authentic record of what the building originally looked like even before the elevator was added to the facade. We advised that this photograph should be used to control the facade of the building. The Architect and owner confirmed that they intended to do so.

The architect also showed us the measured drawings and the photographic record of the existing condition of the building. We noted that no substantial change to what existed was being attempted except as necessitated by the placing of internal partitions for defining room and other functional areas. Again we endorse this adherence to the recommended procedure for undertaking stuctural and other modifications. A proper record of the work done should be prepared after the work is completed for INTACH's records.

Some part of the structure we noted was in a precarious or collapsed condition. We noted that these would be rebuilt in conformity with the existing structure. This is necessary for the safety of the structure and so is in order.

We were also shown a demonstration of stone-cleaning using water jet. The cleared work inspected was satisfactory.

In general we find that the work proposed to be undertaken is following a correct procedure and will meet the objectives of the conservation proposals for the ghats made by INTACH in 1986. We have no objection to its implementation in the manner shown to us.

A.G.Krishna Menon

Amita Baig

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I N T A C H

The Indian
National Trust for
Art and Cultural
Heritage

Dr. Kalyan Krishna
Convener
Varanasi Regional Chapter

"Sita Nivas"
Banaras Hindu University
Varanasi-221 005
Phone : 310876, 312

10 - 7 - 1996

सेवा में
अध्यक्ष, वाराणसी विकास प्राधिकरण, एवं
आयुक्त वाराणसी मण्डल
वाराणसी

मान्यवर,

स्व. श्री राजीव गांधी की अध्यक्षता में गठित "भारतीय सांस्कृतिक निधि", विगत कोई डेढ़ दशक से सम्पूर्ण देश में सांस्कृतिक धरोहरों के पुर्नरुत्थान, जीर्णोद्धार, प्राचीन संस्कृति की रक्षा इत्यादि के कार्यों में संलग्न है इसी श्रृंखला में निधि की वाराणसी ईकाई भी कार्यरत रही है । पूर्व में प्रशासन के सहयोग से मणिकर्णिका घाट एवं चरणपादुका का जीर्णोद्धार, सुरक्षा,घाट की सफाई,राजाघाट पर पेशवा के भवन का जीर्णोद्धार (प्रगतिशील), अस्सी से राजघाट तक की सम्पूर्ण घाटों पर स्थित भवनों पर उग आये पेड़ों, जिनसे भवनों की सुरक्षा को खतरा उत्पन्न हो गया था को निकालने का कार्य, काशी के घाटों के बारे में विशेषों द्वारा तैयार की गई रिपोर्ट को प्रशासन तथा नगर निगम को दिया जाना; संगत कार्य योजना के तहत काशी के घाटों का प्लान निर्माण जिसमें से राजघाट का सरकार ने निर्माण कराया, विद्युत शवदाह भवन का प्लान, नए निर्मित बैठिंग स्टेजनों का प्लान तैयार कराना इत्यादि कार्य किये गए हैं ।

विगत कोई पचास वर्षों का वाराणसी का इतिहास देखा जाए तो अनेकों ऐतिहासिक महत्व की इमारतें, भवन, इत्यादि ध्वस्त हो गए - किसका न तो सामाजिक संस्थाओं अथवा प्रशासन ने पुर्नउत्थान

कृपया:-----

Chairman : Smt. Pupul Jayakar
Secretariat : Shri B. K. Thapar, Shri Martand Singh
Regd. Office : 71, Lodhi Estate, New Delhi-110 003, Phone : 611362-618912-616581

I N T A C H

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The Indian
National Trust for
Art and Cultural
Heritage

Dr. Kalyan Krishna
Convener
Varanasi Regional Chapter

"Sita Nivas"
Banaras Hindu University
Varanasi-221 005
Phone : 310876

किया । इसी प्रकार घाटो पर भी जो नए निर्माण हुए वे पुराने वास्तुशिल्प से सर्वथा भिन्न रहे है - जिससे घाटो की सुन्दरता को भारी क्षति पहुँची है - इनमे राजेन्द्र प्रसाद घर सीवेज पम्पिंग स्टेशन इत्यादि कुछ प्रमुख उदाहरण है । प्रशासन का ध्यान इस ओर निधि द्वारा आकृष्ट किये जाने पर जो अन्य पम्पिंग स्टेशन राजा हरिश्चन्द्र घाट पर निर्मित विद्युत शवदाह गृह निर्माण किए गए उसमे निधि द्वारा विरोधक वास्तुविदो का परामर्श उपलब्ध कराया गया । यदि आज भी देखा जाए तो अस्सी घाट से राजघाट तक घाटो पर स्थित अनेको ऐतिहासिक सुन्दरता के भवन जीर्ण होते जा रहे है जिनमे कोई भी सामाजिक अथवा प्रशासनिक संस्था अथवा राज्य सरकार उनके जीर्णोद्धार मे रुचि नही ले रही है । साथ ही इन प्राचीन भवनों पर अनेको पेड़ निकल आए है - और शीघ्र ही यदि आवश्यक उपाय नही किए गए तो ये सुन्दर भवन ध्वस्त हो जाएंगे । इन घाटो पर स्थित भवन ऐसे महत्वपूर्ण - पुरातत्व के भी नही है - जिन्हे कोई अन्तर्राष्ट्रीय संस्था अथवा पुरातत्व विभाग अधिग्रहण कर इनकी सुरक्षा एवं रख रखाव के लिए ले ले और जो मान मन्दिर घाट पर भवन पुरातत्व विभाग ने अधिगृहीत भी किया है उसका रख रखाव बहुत संतोषप्रद नही है ।

सम्पूर्ण देश मे इस प्रकार के अनेकों ऐतिहासिक महत्व के भवन/हवेलियो क्षतिग्रस्त एवं जीर्ण होते रहे

कृपया:-----

Chairman : Smt. Pupul Jayakar
Secretariat : Shri B. K. Thapar, Shri Martand Singh
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I N T A C H

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The Indian
National Trust for
Art and Cultural
Heritage

Dr. Kalyan Krishna
Convener
Varanasi Regional Chapter

"Sita Nivas"
Banaras Hindu University
Varanasi-221 005
Phone : 310876

है । इनके स्वामियों द्वारा इनके जीर्णोद्धार, पुर्ननिर्माण पर होने वाले भारी व्यय को सहन करना असम्भव था । इस समस्या के समाधान के लिए निधि ने भारत सरकार, पुरातत्व विभाग, तथा पर्यटन मन्त्रालय को सुझाव दिया कि इन भवनों को व्यावसायिक रूप देकर - इन्हें विदेशी पर्यटकों के लिए हेरिटेज होटल बनाने की स्वीकृति प्रदान की जाए जिससे एक ओर ऐतिहासिक, पुरातत्व, के सुन्दर नमूने भविष्य के लिए सुरक्षित हो सकें तथा दूसरी ओर विदेशी पर्यटकों के आकर्षण के कारण देश मे विदेशी मुद्रा की प्राप्ति भी हो । इस सुझाव को भारत सरकार तथा राज्य सरकारों ने हर्ष के साथ स्वीकृता दी - तथा देश के अनेकों, सम्पन्न विशेषकर राजस्थान, मध्य प्रदेश तथा राजस्थान पत्रों के भण्डार अब उत्तर प्रदेश सरकार भी ऐसी योजनाओं को स्वीकृति देने जा रही है ।

वाराणसी मे गंगा तट पर ऐसी एक भव्य इमारत है दरभंगा कोठी जो कि विगत कोई पचास वर्षों से समुचित रख रखाव के अभाव मे आज ध्वस्त होने की स्थिति मे आ गई है इसके अधिकांश भाग को बल्लियों का सहारा देकर गिरने से रोका गया है । अभी कोई एक वर्ष पूर्व इस कोठी के स्वामियों दरभंगा राजवंश के सदस्यों ने इस भवन के जीर्णोद्धार एवं रख रखाव मे होने वाले अत्यधिक व्यय मे

क्रमशः-----

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आसगर्भ होने के कारण इसे विक्रय कर दिया - वर्तमान स्वामियों ने भारतीय सांस्कृतिक निधि से इसके जीर्णोद्धार/पुर्निर्माण हेतु परामर्श किया उनके इस निवेदन पर निधि के नई दिल्ली स्थित मुख्य कार्यालय से एक प्रतिनिधि मण्डल ने जिसमें पुरातत्व में विशेष योग्यता के वास्तुविद भी थे वाराणसी आकर इस भवन का निरीक्षण किया तथा इसकी वर्तमान जर्जर हालत पर चिन्ता व्यक्त करते हुए वर्तमान भवन स्वामियों द्वारा प्रस्तावित हेरिटेज होटल के प्लान से सहमति व्यक्त करते हुए अपना प्रतिवेदन दिया - जिसकी छाया प्रतिलिपि आपके सुलभ अवलोकन हेतु संलग्न है । इस प्रस्तावित मानचित्र के अनुसार वर्तमान भवन के फ्रंट एलीवेशन तथा प्रमुख आकर्षक भागों को मूल स्वरूप में सुरक्षित किया जाएगा । यही नहीं जो पुराने भाग नष्ट होगए है उनका निर्माण भी मूल स्वरूप के अनुसार किया जाएगा ।ऐसी स्थिति में भारतीय सांस्कृतिक निधि आपसे सविनय अनुरोध करती है कि काशी की मूल छवि को सुरक्षित रखने की कड़ी में इस योजना को शीघ्र से शीघ्र अनुमति प्रदान की जाए अन्यथा यह भवन भी एक दो वर्षों में ही ध्वस्त हो जाएगा और इस भव्य भवन के स्थान पर कांक्रीट की

क्रमशः----

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I N T A C H

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Varanasi-221 005
Phone : 310876

छोई गई इमारत खड़ी हो जाएगी जो वाराणसी के सुन्दर घाटों की छवि को कलंकित करेगी ।

पूर्ण विश्वास है कि प्रशासन इस प्रतिवेदन पर वांछित निर्णय शीघ्र लेगा ।

भवदीय

डा0 कल्याण कृष्ण
संयोजक
भारतीय सांस्कृतिक निधि वाराणसी अध्याय

संलग्नक : उपरोक्तानुसार

प्रतिलिपि : आवश्यक निर्णय हेतु --
1. उपाध्यक्ष, वाराणसी विकास प्राधिकरण, वाराणसी
2. डाइरेक्टर जनरल, प्रोजेक्ट, भारतीय सांस्कृतिक निधि, नई दिल्ली ।

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ARCHITECTS
ENGINEERS
VALUERS
TOWN PLANNERS
INTERIOR DESIGNER

JAIN AND ASSOCIATES
D 64/52 G - 4, MADHOPUR, SHIVPURV/
SIGRA, VARANAS
✆ : 221212, 22131

SURVEY REPORT

SUBJECT:- Renovation and restoration of old Palace building of heritage value and of monumental importance

REF.:-House N0s D 20/17 A,B,C,and D 20/16 Plot N0 11513 at Darbhanga Ghat Varanasi

We have surveyed the old palace building along with our technical personalities on 12. 2.2001 . We do hereby submit our report and want to draw your kind attention towards the following points which we observed during the survey of existing old structure .

It seems that the building is quite old more than two hundred years

The walls of the building are having numerous cracks throughout .

It is a load bearing structure and the load bearing walls are in such position that it may fall any time and cause a major accident .

The cladded stones on the walls are of different sizes and irregular shape from inside and old bonding material have lost there strength and liability immediate treatment is required to hold the cladding in proper position.

The existing old slab of the building is of mud and the thickness of the slab is more than two feet . It is required to replace the slab before Mansoon.

Climatic attack has already destroyed and demolished the second floor slab , so the walls are standing freely without any support and still they are facing weather effect and due to that a lot of cracks have developed all over the building .

The most valuable carved stones are in quite dangerous position because the slab over it has already fallen down and they are standing freely . it is required to impose loads on the carved stone pillars by casting of a new slab to hold and maintain the heritage value of the building .

The height of free standing wall is more than 30' .

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ARCHITECTS
ENGINEERS
VALUERS
TOWN PLANNERS
INTERIOR DESIGNER

JAIN AND ASSOCIATES
D 64/52 G - 4, MADHOPUR, SHIVPURA
SIGRA, VARANA
✆ : 221212, 2213

We are given to understand that the condition of the roof is awfully Precarious. It has developed enormous cracks all over along with part of parapet wall getting segregated from the building main. The roofs are of wooden beam which has almost lost its bearing due to termite and age.

Material used in existing structure is Mud, old Bricks ,Wood, Stone and Burry which have lost its strength completely

As the demolition of the old and cracked walls is going on now the building is in such a position that the strengthening of old walls and casting of slab is required wherever necessary . It will tie the freely standing walls with the slab and will also increase the rigidity of the structure , Which is very important from technical point of view.

Moreover being a highly dense populated area , and due to Bank of Gages it may cause more loss of life ,if unfortunately such an accident occurs

So it is hereby concluded that an immediate action is required in this direction for strengthening and restoration of the Heritage structure of monumental importance and to avoid any undesirable incident .

Under the circumstances stated above it would be partinent on our part to draw your Pointed attention towards necessary repair to the tune your deem it necessary Your earliest intervention in the matter prior to our commencement of the work will be highly appreciated .

R.C. JAIN
(Architect)
R. C. Jain (B. Arch.)
Architect and Interior Designer's
Regd.No. C A 67/10503, V D N-~~99~~ A-119
Varanasi Development Authority
Varanasi.

Encl-13

ANNEXURE-10

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वाराणसी विकास प्राधिकरण, वाराणसी

(11)

प्रतिष्ठा में,

श्रीमान् अपूर्व कुमार विवेक कुमार वर्मा

डी-20/17 सुंदरपुर

वाराणसी.

संख्या D 24/2001 नो (नो०) दिनांक 28/8/2001

विषय—भूमि संख्या D 20/17 सुंदरपुर से किये गये अनधिकृत निर्माण के सम्बन्ध में।

महोदय,

इस लोक भवन में अनधिकृत निर्माण किये जाने पर आपको इस कार्यालय के नोटिस संख्या D 24/2001 नो० दिनांक 20/4/2001 को दी गयी थी। इस मामले में अब अन्तिम निर्णय किया जाना है।

अतः आपको अन्तिम रूप से सूचित किया जाता है कि इस मामले में यदि आपको कुछ कहना हो तो सबूत (यदि कोई हो) सहित इस कार्यालय में दिनांक 10/8/2001 को पूर्वाह्न / अपराह्न 11 बजे उपस्थित होने का कष्ट करें।

सुनी अनधिकृत निर्माण के बाद लोक भवन बनाया है।

भवदीय—

Received on 07/08/2001 at 03HRS

7/8/01

Letter ark up to file COMPOUNDING PLAN

(हस्ताक्षर) 28/8/01

वाराणसी विकास प्राधिकरण

Encl- 14

(12)

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MAHENDRA SHAH

Attorney to
Apoorva Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar

August 4, 2001

The Vice - Chairman
Varanasi Vikas Pradhikaran
Varanasi

Madam,

Re: **Restoration, Conservation & Renovation of Darbhanga Palace at Darbhanga Ghat, Varanasi as per sanctioned plan by the VDA**

We draw your kind attention to the notices no. D 24/2001/[illegible] dt. 30.6.2001 (both) *Dashashwamedh Ward*, both dated 30.6.2001 u/s 27 & 28 of the *UP Nagar Niyojan evam Vikas Adhiniyam 1973* and our personal as well written representation dated 9th July 2001. As instructed by you to the VDA authorities, the still and vedeo photography has also been done by them of the entire existing rooms and building.

As already stated in our letter under reference, due to suspension of the reconstruction work, there has been further damages to the already dilapidated roofs & walls. We shall therefore again request to kindly accord us permission to continue the renovation/ restoration work within the guidelines of INTACH and the sanctioned plan.

Your earliest action shall be highly appreciated.

Thanking you,

Yours faithfully,

MAHENDRA SHAH
Attorney

Cc: 1. Shri Atul Kumar Gupta, IAS
Principal Secretary Awaas, Lucknow ..... for information & with copy of our representation dated 9th July 2001

2. Shri P.L.Punia, IAS
Principal Secretary & Commissioner
Awaas *Evam* Urban Development,
Lucknow ..... As above

Encl – 15

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Attorney to
Apoorva Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar

August 10, 2001

Sachiv
Varanasi Vikas Pradhikaran
Varanasi

Dear Sir,

Re: **Restoration, Conservation & Renovation of Darbhanga Palace at Darbhanga Ghat, Varanasi as per sanctioned plan by the VDA**

This has reference to your letter no. D 24/2001 dated 2.8.2001 delivered to us in the afternoon on 7.8.2001 asking us to submit five copies of compounding plans by 10.8.2001.

As the time given to us for submission of compounding plan is too short, we would request you to please grant us 10 days more time for the same and oblige.

Thanking you,

Yours faithfully,

MAHENDRA SHAH
Attorney

10.8.01

Encl - 16 (15)

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Attorney to
Apoorva Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar

August 20, 2001

The Sachiv
Varanasi Vikas Pradhikaran
Varanasi

Dear Sir,

Re: **Restoration, Conservation & Renovation of Darbhanga Palace at Darbhanga Ghat, Varanasi as per sanctioned plan by the VDA**

In continuation of our letter dated 10.8.2001, in reply to your notice for submission of the Compounding Plans, we have again received your letter dated 10.8.2001, asking us to submit a revised plan.

As already mentioned in our previous petitions given to you from time to time, that we are in no way changing the heritage value/ salient features of this property. However in order to maintain the structural safety and stability, it had become necessary to strengthen or reconstruct a few wall/slab which were reconstructed at the same place provided in the sanctioned plan.

As per the directions given by the VDA authorities and as per the G.O. dated 11.4.2001, it is necessary to get the opinion of the INTACH for all such reconstruction & changes, we have requested them to inspect the site and give their expert report.

As soon as the same is received, we shall revert back and take the necessary action.

Thanking you,

Yours faithfully,

MAHENDRA SHAH
Attorney

Encl -18

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In the High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.

Writ Petition No. of 2001(L.B.).

1. Apurva Kumar, aged about 40 years,
2. Anoop Kumar, aged about 35 years,
Both 1 & 2 sons of Sri Birendra Kumar,
resident of 70,New Agra,U.P.
3. Vivek Kumar, aged about 37 years,
4. Manish Kumar, aged about 33 years,
Both 3 & 4 sons of Sri Arvind Kumar,
resident of No.1,Ahiri Pukur Road,
Baliganj, Calcutta-19.
Through their duly constituted Attorney -
Sri Mahendra Prasad Shah, son of Late
Rama Prasad Shah, resident of Kumia Kutir,
B-36/6,Sankat Mochan Marg, Varanasi.

--------Petitioners

Versus

1. The State of U.P. through the Secretary,
Department of Awas Evam Nagar Vikas,
Government of U.P., Civil Secretariat,Lucknow.

Attested
M. P. Mishra
Notary Varanasi

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2. Principal Secretary, Avas Vibhag,
Government of U.P., Civil Secretariat,
Lucknow.
3. Vice Chairman,
Varanasi Vikas Pradhikaran,
Varanasi.
4. Varanasi Vikas Pradhikaran, Varanasi,
through its Vice Chairman.
5. Secretary,
Varanasi Vikas Pradhikaran,
Varanasi.

--------Opp-parties

--

Writ Petition under Article 227 of
the Constitution of India.

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To,

The Hon'ble the Chief Justice and his other Hon'ble Companion Judges of the Hon'ble High Court at Allahabad.

--

The petitioners, named above, humbly beg to state as under:-

1. That it is categorically stated that no other writ petition has been filed either in the High Court of Judicature at Allahabad or in its Lucknow Bench, Lucknow, for the reliefs prayed for in the instant writ petition or in respect of the same subject matter.

M. P. Mishra
Notary Varanasi

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Court No.9

Civil Misc.Writ Petition No.43661 of 2001

Apurva Kumar and others vs. The State of U.P.and others.

Hon'ble S.P.Srivastava,J.
Hon'ble D.K.Chaudhary,J.

Heard the learned counsel for the petitioners. Learned counsel for the contesting respondent no.2 is not present in spite of notice to him.

Perused the record.

The State Government vide its order dated 20.8.2001 had directed the Development Authority, Varanasi to take the appropriate decision in the matter after getting the building inspected from Indian National Trust for Art & Cultural Heritage, Varanasi region. It may be noticed that Vikas Pradhikaran, Varanasi issued a direction staying the construction work undertaken by the petitioners on the ground that the offending constructions were contrary to the sanctioned building plan. Subsequent to the order issued by the State Government dated 20.8.2001, the Vikas Pradhikaran, Varanasi had approached the Indian National Trust for Art & Cultural Heritage, New Delhi to get the building reinspected and submit its report taking into considration the heritage aspect so that the matter regarding grant of permission to construct may be reconsidered. In the aforesaid letter dated 24.8.2001 the Indian National Trust for Art & Cultural Heritage had also been requested that at every stage inspection may be undertaken by them and Development Authority may be properly advised.

The grievance of the petitioners is that subsequent to 24.8.2001, all construction work has been stayed and no decision is being taken by the competent authority in the matter with the result that although the building plan has

W. P. Mishra
Notary Varanasi

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been sanctioned and there is no objection by the Indian National Trust for Art & Cultural Heritage, still the petitioners are unable to complete their project . This situation, it is claimed, is causing irreparable loss to the petitioners.

Taking into consideration the facts and circumstances as brought on record in their totality, this writ petition is disposed of finally directing the respondents no.3 and 4 to ensure that the final decision in the matter in question is taken within a period not later than one month from the date of production of certified copy of this order, after affording opportunity of hearing to the petitioners, by a speaking order.

There shall be no order as to costs.

Sd/- S.P. Srivastava - J.

Sd/- D.K. Chakrabarty - J.

Dated:13.5.2002
RCS/-

Compared by
21-5-02

Attested
By
M. P. Mishra
Notary Varanasi

वाराणसी विकास प्राधिकरण, वाराणसी

(71) 46

पत्रांक :

श्री अमर कुमार, श्री दिनेश कुमार एवं श्री नरेश कुमार,
दरोगी श्री महेन्द्र प्रताप राय, डी0 20/17 एम0डी0डी0,
दशाश्वमेध, वाराणसी

पत्रांक /विप्रा/ दिनांक

विषय : दरोगी संख्या-11513 मौजा शहरखास, भवन संख्या-डी0 20/16 एवं डी0 20/17एम0डी0डी0 दशाश्वमेध पर स्थित ऐतिहासिक भवन "दरभंगा पैलेस" के आवश्यक निर्माण कार्य के सम्बन्ध में।

महोदय,

कृपया वरिष्ठ संरक्षण सहायक, भारतीय पुरातत्व सर्वेक्षण, उप मंडल, वाराणसी, वाराणसी के संलग्न पत्र दिनांक 21.3.2018 का सन्दर्भ ग्रहण कर मौके का संयुक्त निरीक्षण किया गया जिसमें प्रतिनिधि अधोहस्ताक्षरी को प्रकट की गयी है। कृपया पत्र में वर्णित बिन्दुओं के अनुसार अनुपालन करते हुए मलबा निस्तारण, भारतीय पुरातत्व सर्वेक्षण, वाराणसी से अनुमति प्राप्त होने के उपरान्त ही कार्य करने की अपेक्षा की गयी है।

अतः भारतीय पुरातत्व सर्वेक्षण विभाग के उक्त पत्र के परिप्रेक्ष्य में यह निर्देश दिया जाता है कि मौके पर निर्माण कार्य तत्काल प्रभाव से अग्रिम आदेश तक रोक दिया जाय और भारतीय पुरातत्व संरक्षण विभाग से निर्माण के सम्बन्ध में अनापत्ति प्रमाण पत्र प्राप्त कर अधोहस्ताक्षरी के कार्यालय में प्रस्तुत किया जाय।
संलग्नक उपरोक्तानुसार

भवदीय,

(वीर राम)
अधिशासी

पत्रांक /विप्रा/ दिनांक

प्रतिलिपि- (1) आयुक्त महोदय, वाराणसी मण्डल, वाराणसी को सूचनार्थ।
(2) वरिष्ठ संरक्षण सहायक, भारतीय पुरातत्व सर्वेक्षण, उप मंडल, वाराणसी, वाराणसी को प्रकटांकित संख्या-अवैध/अतिक्रमण/वाराणसी/1624 दिनांक 26-4-2018 के सन्दर्भ में सूचनार्थ प्रेषित।
(3) संयुक्त/क्षेत्रीय अधिकारी (दशाश्वमेध) को इस आशय से कि वह इन निर्देशों का अनुपालन सुनिश्चित करायें।

(वीर राम)
अधिशासी

Encl-20 29 47

Attorney to
Ajaswar Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar

19th September 2003

The Superintending Archeologist
Archeological Survey of India – Patna Circle
Judges Court Road
Patna

Dear Sir,

Re: **Restoration, Conservation & Renovation of Darbhanga Palace at Darbhanga Ghat, Varanasi as per Sanctioned Plans by the Varanasi Development Authority**

Enclosed herewith please find our application on Form No.VIII for permission to continue the restoration/conservation work at the above site.

In this regard we have to state that we were carrying on the work at the site as per the sanctioned plan by the VDA when all of a sudden our work was stopped by the VDA. On enquiry we were informed that there has been an objection by the Varanasi ASI Authorities as our building stands at approx. 280 – 285 meters within the Regulated area of 300 Meters from the National Monument i.e. *Man Mahal Vedhshaala*, at Man Mandir Ghat, Varanasi. This requirement was never brought to our notice by the VDA and our plans were duly approved and even an extension of one year time was granted by them recently. However the only requirement asked for by the VDA was to get report & approval from INTACH, New Delhi, which we have been getting from time to time as would be evident from the enclosed copies of five reports submitted by them. This is apart from approving our original Renovation Plans which was subsequently approved by VDA.

We have to stress here that we are only doing the Restoration & Conservation work in the completely dilapidated building, many portion of which has already collapsed including the right side *BURJ* on the front elevation facing the Ganges. Another point to be considered is that our premises falls short by only about 15 – 20 meters within the regulated area which does not cover the entire building but only a portion of the building from the North side.

We are enclosing here with the following documents for your kind consideration:

1. Photocopies of Power of Attorney 3 numbers
2. Photo copies of duly attested Sanctioned Plans by the VDA in triplicate.

49 29 54

3. Key Plan of the site in triplicate
4. Photocopy of the Letter of Sanction of the Plan by the VDA
5. Photocopy of the of Letter of the VDA extending the time upto 25.4.2004
6. Photo copies of 5 Reports by the INTACH, New Delhi
7. A perspective photograph showing the look of the front elevation when completed.
8. Photocopy of the Notices dated 25.6.2003 & 26.6.2003 of the VDA stopping the work.
9. Mutation Card & Rent issued by Nagar Nigam, Varanasi

Under the circumstances, with all the facts mentioned above and the documents being submitted herewith, we trust you will appreciate the restoration work being undertaken by us under the guidance of INTACH, New Delhi which is urgently required to be completed to save a land mark building on the world famous *Ghats* of Varanasi.

We therefore request you to kindly grant us permission to continue the restoration & conservation work & oblige.

Thanking you,

Yours faithfully,

MAHENDRA SHAH
Attorney

Enclo: As above

Cc: The Director General
Archeological Survey of India
Janpath
New Delhi .... for information & with the kind request to get us the permission at the earliest & oblige.

49 85

ANNEXURE- 1

20 P3

Form VIII

Application for licence for ~~Mining Operation~~/Construction within a Regulate Area
(Vide rule 34)

1. Name and address of applicant: Mahendra Prasad Shah, Attorney to Apoorva Ku.,Vivek Ku., Anoop Ku. & Manish Kumar Kamla Kutir, Chaitat Mochan Marg, Varanasi

2. Name of the monument near or adjoining which the regulated area is situatuated

Locality	District	State
Mad Mahal Vedh-shala Manmandir Ghat	Varanasi	U.P.

3. Nature and details of the proponed mining operation/construction in respect of which permission is sought: Restoration, Conservation & Renovation of Darbhanga Palace (H.No.D20/17 A,B,C & D 20/16 at Darbhanga Ghat (Settlement Plot No. 1151) Area - Shahar Khas)

(In the case of mining operation, a site-plan in triplicate showing in red outline the extent of the operation in relation to the monument and the regulated area should be attached; and the details regarding the depth down to which the operation is to be carried out, the mode of the operation, the method of the muffling of sound, the kind and charge of blasting material and the depth an number of bord-holes to be fixed at a time should be specified) N.A.

In the case of construction, a site-plan in triplicate showing in red outline the location of the building in relation to the monument and the regulated area and the plan elevation of the building should be attached; and the colour, external appearance and method of the screening of the building and the depth down to which the soil will be excavated for the appurtenances of the building should be specified.) Plans Attached

4. Purpose of the ~~mining operation~~/construction: Restoration,Conservation & Renovation of the dilapidated building

5. Approximate duration and date of commencement of the proposed ~~mining operation~~/construction: The work was already in progress as per the sanction orders of Varanasi Dev.Autho. when suddenly it was stopped by them.

I declare that the above information is correct. I also undertake to observe the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, and the rules made there under.

Seal of the organization

Salation Varanasi
Date Sept.19, 2003

Signature of the applicant
Mahendra Prasad Shah

1. If the applicant is on behalf of an organization, the name thereof should be given.
2. If the application is on behalf of an organization, the signatures should be that of the head of that organization.

Encl – 21

भारत सरकार
GOVT. OF INDIA

भारतीय पुरातत्त्व सर्वेक्षण
[illegible], जे.सी. रोड (अन्टाघाट)
[illegible]-800 001

E-mail : casipatna@rediffmail.com
Tel. Ph. : 2673188 (O)
2688623 (O)
T-F : 2688741 (O)
2665753 (R)
ARCHAEOLOGICAL SURVEY OF INDIA
PATNA CIRCLE, J.C. ROAD, (ANTAGHAT)
PATNA-800 001

No.1/54/04-M- 7 5 6

Patna, dated the

To

Sri Mahendra Prasad Shah,
Attorney to: Apporva Kumar,
Vivek Kumar, Annop Kumar &
Manish Kumar,
Kamla Kutir,
Sankat Mochan Marg,
Varanasi (Uttar Pradesh).

Sub.: Issue of NOC for restoration, conservation & renovation of the dilapidated building No.D20/17A, 17B, 17C & 16 on plot No.11513, Shehar Khas, Darbhanga Ghat, Varanasi (Uttar Pradesh) – Reg.

Sir,

With reference to your application on the subject cited above, undersigned is pleased to issue license for restoration, conservation & renovation of the dilapidated building at a distance of 266.00 meters (regulated area) from the protected limits of the Centrally Protected Monument / Site i.e. Jai Singh Observatory, Man Mahal at Varanasi (Uttar Pradesh).

The building should not be used for any purpose other than that mentioned by you in serial number 4 in form number VIII.

You are requested to adhere to the terms and conditions laid down in the license enclosed herewith. In the event of any violation of the terms & conditions suitable action will be taken to stop the construction & cancel the license.

Yours sincerely

Superintending Archaeologist

No.1/54/04-M- 7 5 7 / 6-7 5 8

Patna dated the

Copy to: -

1. The Director (Monuments), Archaeological Survey of India, Janpath, New Delhi for information and necessary action.
2. Sri P.K. Tripathi, Conservation Assistant Gr.I, Archaeological Survey of India, Sub Circle, Sarnath, Varanasi (Uttar Pradesh) with the instruction to visit the site periodically and ensure the adherence of terms & conditions.

Superintending Archaeologist

51 88

Form VIII

Application for licence for Mining ~~Operation~~/Construction within a Regulated Area
(Vide rule 34)

Name and address of applicant	Mahendra Prasad Shah, Attorney to Apoorva Ku., Vivek Ku., Anoop Ku. & Manish Kumar Kamla Kutir, Sankat Mochan Marg, Varanasi
Name of the monument near or adjoining which the regulated area is situatuated	Locality: MunMahal Vedh-uhaula Manmandir Ghat; District: Varanasi; State: Up
Nature and details of the proposed mining operation/construction in respect of which permission is sought	Restoration, Conservation & Renovation of Durbhanga Palace (H.No.520/17 A,B,C & D 2 16 at Darbhangu Ghat (Settlement Plot No. 1151) Mouza - Shudur Khas)

(In the case of mining operation, a site-plan in triplicate showing in red outline the extent of the operation in relation to the monument and the regulated area should be attached; and the details regarding the depth down to which the operation is to be carried out, the mode of the operation, the method of the muffling of sound, the kind and charge of blasting material and the depth an number of blast-holes to be fixed at a time should be specified) N.A.

(In the case of construction, a site-plan in triplicate showing in red outline the location of the building in relation to the monument and the regulated area and the plan elevation of the building should be attached; and the colour, external appearance and method of the screening of the building and the depth down to which the soil will be excavated for the appurtenances of the building should be specified.) Plans Attached

Purpose of the ~~mining~~ construction	Restoration, Conservation & Renovation of the dilapidated building
Approximate duration and date of commencement of the proposed ~~mining operation~~/construction	The work was already in progress as per the sanction orders of Varanasi Dev. Autho. when suddenly it was stopped by them.

I declare that the above information is correct. I also undertake to observe the provisions of the Ancient Monu[illegible]s and Archaeological Sites and Remains Act, 1958, and the rules made there under.

Seal of the organization

Satation Varanasi
Date Sept.19, 2003

Signature of the applicant
Mahendra Prasad Shah
Apoorva Kumar, Vivek [illegible]

1. If the applicant is on behalf of an organization, the name thereof should be given.
2. If the application is on behalf of an organization, the signature should be that of the head of that organization.

52 59

FORM VIII

LICENCE FOR MINING OPERATION / CONSTRUCTION WITHIN A REGULATED AREA

Whereas Sri Mahendra Prasad Shah, *Attorney to: Apporva Kumar, Vivek Kumar, Annop Kumar &Manish Kumar,* Kamla Kutir, Sankat Mochan Marg, Varanasi (Uttar Pradesh) has applied for a licence for carrying out **restoration, conservation & renovation of the dilapidated building No.D20/17A, 17B, 17C & 16 on plot No.11513, Shehar Khas, Darbhanga Ghat, Varanasi (Uttar Pradesh)** in the regulated area near the Centrally Protected Monuments / Sites namely Jai Singh Observatory, Man Mahal at Varanasi (Uttar Pradesh) and has undertaken to observe the provisions of the Ancient Monuments and Archaeological Sites & Remains Act, 1958 and Rules made there under.

The Superintending Archaeologist, Archaeological Survey of India, Patna Circle, Patna on behalf of Director General, Archaeological Survey of India, New Delhi do hereby grant this license under sub-rule (1) of rule 35 of the said rules to the said Sri Mahendra Prasad Shah, *Attorney to: Apporva Kumar, Vivek Kumar, Annop Kumar & Manish Kumar,* Kamla Kutir, Sankat Mochan Marg, Varanasi (Uttar Pradesh) for carrying out **restoration, conservation & renovation of the dilapidated building** in the area indicated in red outline on the plan attached hereto.

The license is granted subject to the provisions of the said Act and Rules and is further subject to the following conditions, namely:

a. Original height and outer appearance should be maintained.
b. Any addition or alternation should be at par with its original plan and texture.
c. Hoarding of any type is not permitted on/above the building obstructing the view of the monument.
d. No structure of historical importance, which has been in existence for more than 75 years, should be demolished.
e. Appropriate breathing space should be ensured around the building for better maintenance of the environment.
f. **The license is only for the purpose applied for.**

The license is not transferable. It shall be valid for one year commencing with the date of issue of this licence.
This issue with the approval of the competent authority.

Station : Patna
Dated : 20.07.2004
F.No. : 1/51/04-M

for Superintending Archaeologist

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Encl – 22

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OK

Attorney to Apoorva Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar

September 15, 2004

The Vice – Chairman
Varanasi Vikas Pradhikaran
Varanasi

Dear Sir,

Re: **Restoration, Conservation & Renovation of Darbhanga Palace At Darbhanga Ghat, Varanasi as per sanctioned plan by the VDA**

At the outset we thank you for the courtesies extended to us during our meeting on Monday. As desired, we are giving below the details of the present position of the Darbhanga Palace Project in a brief note.

1. Our Plan for *Restoration & Reconstruction of Darbhanga Palace at Darbhanga Ghat for* ***Heritage Hotel*** was approved by the VDA vide their sanction order No. 4/96 *Hotel Vinyas* dated 26.4.97.

2. On our request for extension of time, we were asked by the VDA vide their letter No.189/*Vi. Pra./Sachiv* dated 25.10.2002 to submit four sets of Plans showing the remaining and extra internal work, not proposed earlier, which was forwarded directly by the VDA to INTACH, New Delhi for their approval. After the INTACH's approval was received by the VDA, we were given an extension of time vide VDA's letter No.4/96/ *Hotel/Vinyas* dated 31.3.2003 for a period upto 25.4.2004 (*Annexure 1*) with the condition that the work should be periodically inspected by the INTACH, New Delhi and report submitted to the VDA.

3. When our work was under progress, in June 2003 the VDA asked INTACH directly to inspect the project and submit their report. In the meantime, on a report lodged by the local Archeological Survey of India, the VDA Sealed the premises on 23.6.2003 and asked us to get a NOC from the ASI, before further permission could be granted.

4. The INTACH, New Delhi submitted their inspection report No.F5-6-1-INTACH dated 1.7.2003 (*Annexure 2*) to the Vice-Chairman, VDA approving the method & the work being carried out by the promoters.

Encl-23

वाराणसी विकास प्राधिकरण, वाराणसी

आदेश

श्री महेन्द्र कुमार शाह, एटार्नी श्री अपूर्व कुमार, श्री विवेक कुमार, श्री अनूप कुमार व श्री मनीष कुमार द्वारा भवन संख्या–डी.20/17(ए), 20/17बी,20/17सी व 20/16 मुहल्ला–दरभंगाघाट, बन्दोबस्ती प्लाट नं0 11513 मौजा–शहरखास, परगना–देहात अमातन, वाराणसी द्वारा अनधिकृत निर्माण किये जाने पर पक्ष उ0प्र0 नगर योजना एवं विकास अधिनियम, 1973 की धारा–27,28 के अन्तर्गत नोटिस जारी करते हुए निर्माण स्थल को अधिनियम की धारा–28 (ए) के तहत सील कर दिया गया। पक्ष द्वारा अनुरोध किया गया है कि सील आदेश के कारण परिसर में प्रवेश प्रतिबन्धित है एवं शमन मानचित्र दाखिल करने हेतु पैमाईश आवश्यक है, जिसके लिए सील खोल दिया जाय। अतः उपाध्यक्ष महोदय के आदेश दिनांकः 20.01.05 द्वारा निम्न शर्तों के साथ सील खोलने की अनुमति दी जाती है :–

1. पक्ष को एक सप्ताह के अन्दर शमन मानचित्र प्रस्तुत करना होगा।
2. पक्ष द्वारा स्थल पर कोई नया निर्माण कार्य नहीं किया जायेगा।

अतः एतद् द्वारा सहायक अभियन्ता वार्ड–दशाश्वमेध को निर्देशित किया जाता है कि स्थल पर लगायी गयी सील को खोलने की कार्यवाही करें एवं स्थल पर निगाह रखें तथा अनुपालन आख्या प्रस्तुत करें।

(आर. विक्रम सिंह)
सचिव।

पत्रांक : D43/03 सी /वि0प्रा0/3195 /04–05 दिनांक : 20-1-05

प्रतिलिपि –

1. उपाध्यक्ष महोदय को उनके आदेश दिनांकः 20.01.05 के अनुक्रम में अवलोकनार्थ।
2. सहायक अभियन्ता/अवर अभियन्ता, दशाश्वमेध वार्ड को अनुपालनार्थ प्रेषित।
3. थानाध्यक्ष, थाना – दशाश्वमेध, वाराणसी को सूचनार्थ प्रेषित।
4. श्री महेन्द्र कुमार शाह, एटार्नी श्री अपूर्व कुमार, श्री विवेक कुमार, श्री अनूप कुमार व श्री मनीष कुमार द्वारा भवन संख्या–डी.20/17(ए), 20/17बी,20/17सी व 20/16 मुहल्ला–दरभंगाघाट, बन्दोबस्ती प्लाट नं0 11513 मौजा–शहरखास, परगना–देहात अमातन, वाराणसी सूचनार्थ प्रेषित।

(आर. विक्रम सिंह)
सचिव।

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Encl – 24

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From:
Mahendra Shah – *Attorney to* – Shri Apoorva Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar

Kamla Kutir
Sankat Mochan Marg
Varanasi

To
The Secretary
Varanasi Vikas Pradhikaran
Varanasi

January 24, 2005

Re: Restoration, Conservation & Renovation of
House No.D 20/17 A, B, C & D 20/16, Darbhanga Ghat, Varanasi
Settlement Plot No.11513, Mouza – Shahar Khas, Varanasi

Sir,

In compliance of your order No. D 47/03 No./*Vi. Pra./ Bhawan* / 04-05 dated 20.1.05, I am pleased to submit the Compounding Plans in 2 sets of 3 sheets each for the needful.

I would now request you to kindly approve the compounding plans and grant sufficient extension of time for the execution and completion of project at the earliest & oblige.

Thanking you,

Yours truly,

MAHENDRA SHAH
Attorney

Received
25-1-05

Encl: 2 Sets of Compounding Plans of 3 sheets each

वाराणसी विकास क्षेत्र, वाराणसी

अनुमति – पत्र

संख्या 296 दिनांक 3/3/05

गृह निर्माणार्थ अनुमति–पत्र

यह अनुमति केवल उ0प्र0 नगर योजना और विकास अधिनियम 1973 की धारा 14 के अन्तर्गत दी जाती है, किन्तु इसका अर्थ यह न समझा जाना चाहिये कि उस भूमि के सम्बन्ध में जिस पर मकान बने इस किसी प्रकार या किसी स्थानीय निवास या स्थानीय अधिकारी या व्यक्ति अथवा फर्म के मालिकाना अधिकारों पर किसी का कोई असर पड़ेगा अर्थात यह अनुमति किसी के मिल्कियत या स्वामित्व के अधिकारों के विरुद्ध कोई प्रभाव न डालेगी ।

निम्नलिखित प्रतिबन्धों के आधार पर अनुमति दी जाती है कि श्रीमती / श्री [illegible] पिता / पति का नाम श्री [illegible] मुहल्ला [illegible] वार्ड नं [illegible] में नक्शे में दर्शित स्थान पर जो प्रार्थना पत्र के साथ प्रस्तुत किये गये हैं, उपाध्यक्ष के निश्चित भवन चित्र अनुसार निर्माण अथवा पुनः–निर्माण किया जाय ।

मुहर

दिनांक 3-3-2005

कृते उपाध्यक्ष
वाराणसी विकास प्राधिकरण
वाराणसी

नोट:– 1– यह स्वीकृति केवल पत्र पाँच वर्ष की अवधि के लिये है । यदि इमारत आज्ञानुकूल नहीं बनी तो उपाध्यक्ष द्वारा उसे गिरवाया जा सकता है अथवा ऐसे रूप में परिवर्तित किया जा सकता है जो कि समुचित समझा जावे । इसका पूर्ण व्यय का भार प्रार्थी पर होगा । यदि कोई इमारत बिना उपाध्यक्ष की अनुमति प्राप्त किये निर्माणित अथवा पुनः निर्माणित होगा तो उसके निर्माणकर्ता को दण्ड दिया जावेगा अथवा इस प्रकार के अवज्ञात्मक इमारत को उपाध्यक्ष द्वारा हटवा दिया जायेगा और उसके हटाने के खर्च का भार उस इमारत बनाने वाले से वसूल किया जायेगा ।

2– इस अनुमति पत्र में सड़क, गली या नाली पर बढ़ाकर प्रोजेक्शन जैसे कि पोर्टिको, बारजा, तोड़ा, सीढ़ी, आदि नये अथवा पुराने निर्माण को तोड़कर उस जगह फिर से नये निर्माण की स्वीकृति चाहे उसके साथ नक्शे में दिखाई भी हो, नहीं प्रदान की जावेगी । इस निर्माणों के लिए प्राधिकरण अधिनियम की धारा 293 के अनुसार अनुमति प्राप्त करना होगा ।

3– मकान निर्माण से यदि नाली सड़क की पटरी अथवा सड़क या नाली के किसी भाग (जो मान के अगवाड़े पिछवाड़े अथवा उसके आकार के कारण ढक ली गई हो) को हानि पहुँचे तो यह गृह स्वामी को गृह तैयार हो जाने पर दिन के भीतर अथवा यदि प्राधिकरण ने एक लिखित सूचना द्वारा शीघ्र कहा हो तो पहिले उसे अपने खर्चे से मरम्मत कराकर पूर्ववत् अवस्था में जिससे प्राधिकरण को सन्तोष हो जावे, में कर देना होगा ।

4– गृह निर्माण के समय इसका भी ध्यान रखना होगा कि भारतीय विद्युत अधिनियम 1973 (अधिनियम इलेक्ट्रिसिटी रूल्स के नियम 1970 का उल्लंघन किसी दशा में न होना चाहिये । यदि उपाध्यक्ष की जानकारी में ऐसे मामले पाये गये तो वह निर्माण को रोक अथवा हटा सकता है ।

5– प्रार्थी को नियमानुसार उपाध्यक्ष को मकान के पूर्ण हो जाने की सूचना मकान समय के भीतर पूर्ण होने के पश्चात् 15 दिन के अन्दर देना होगा । यदि सूचना दी गई तो यह समझा जायगा कि मकान पूर्ण हो गया ।

6– यह अनुमति यदि किसी कारणवश नजूल, प्राधिकरण अथवा जमीन्दारी उन्मूलन की भूमि पर निर्माण हेतु दे दी गई हो तो वैध न मानी जायगी और प्राधिकरण को अधिकार होगा कि ऐसे भूमि पर निर्मित भवन आदि हटा दें जिसका कोई हर्जाना प्राधिकरण द्वारा देय न होगा । इसलिए भूमि स्वामी अपनी भूमी के सम्बन्ध में पूर्ण जानकारी प्राप्त करके तभी निर्माण कार्य प्रारम्भ करें ।

7– यदि अधिकसित क्षेत्र के हेतु किसी प्रकार अनुमति दे दी गई तो यह भी वैध अनुमति पत्र नहीं माना जायेगा तथा निर्माण कार्य को विध्वंस कर दिया जायेगा जिसका कोई हर्जाना नहीं दिया जायेगा ।

(8) [illegible]

(9) [illegible]

(10) [illegible]

57

(11) અમદાવાદ પુરાતત્વ વર્તુળ, ગુજરાત રાજ્ય, ગાંધીનગર (ગાંધીનગર)

પત્ર ક્રમાંક પીએમ/ ક્રમાંક 1154/04-M- 2506, તારીખ 20 જુલાઈ 2004

ની સામે પ્રસિદ્ધ કરેલ નોંધ અનુસાર કોઈ પણ વ્યક્તિ પાસેથી વાંધા

અપેક્ષાએ છે.

वाराणसी विकास प्राधिक वाराणसी

50

प्रतिष्ठा में,

श्री अनूप कुमार, एवं विनय कुमार एवं [illegible] कुमार

एडवोकेट के महेन्द्र प्रताप शाह

[illegible] 20/17, ब.भा.ति. वाराणसी

पत्रांक ...4426/डी.सी.ल./04-05 दिनांक 2.3.05

विषय : [illegible] 11513 नीलम सहरजात खाद सेवा डी0 20/15 सी 2020/17 [illegible] के विरुद्ध रिविजनल [illegible]

महोदय,

उपरोक्त विषयक आपके आवेदन पत्र दिनांक 25.1.05 के संबंध में आपको अवगत कराना है कि आपके परिवर्तन परिवर्धन मानचित्र पर निम्नांकित शुल्क लगाये गये है जो निम्न प्रकार है।

1- प्रदान शुल्क अंकित 1,10,000.00

2- स्टैम्प ड्यूटी अंकित 21,056.00

3- पुनरीक्षण शुल्क अंकित 7,799.00

4- जल शुल्क अंकित 11,303.00

5- सुरक्षा शुल्क अंकित 40,552.00

अतः उपरोक्त शुल्क की धनराशि 5 दिवस के अन्दर प्राधिकरण कोष में जमा करने का कष्ट करें, ताकि आपके मानचित्र पर अग्रिम की कार्यवाही की जा सके।

भवदीय,

अधिशासी अभियन्ता (मानचित्र)

59

प्रपत्र संख्या -२
[नियम ८ देखें]

वाराणसी विकास प्राधिकरण

दूसरी प्रति
(भुगतान करने वाले व्यक्ति को सौंपने के लिए)

पुस्तक संख्या 23 रसीद संख्या 88

190715=00

रुपया श्री आदित्य कुमार, विवेक कुमार, अनीश कुमार राहुल श्री मेहरु

पुलिस हेड्स से प्राप्त हुए।

रुपया (अन्तर मात्रा में) एक लाख नब्बे हजार सात सौ पन्द्रह रुपये

के मद में जमा हेतु रु 110000=00 भवन सं० 11513

आवेदन हेतु रु 21056=00 क्षेत्र 2a-21, 2a-24,

सुपरविजन शुल्क रु 7799=00 D26/16, D26/17 A&E

अतिरिक्त शुल्क रु 11302=00 4/96 हैरिटेज/कि-16

भूमि की कीमत शुल्क रु 40532=00

अवधि के लिए

मांग/बिल संख्या दिनांक रु 190715=00 भुगतान प्राप्त हुए

2/3/2005.

सम्पूर्ण/आंशिक

रोकड़िया

उपाध्यक्ष

दिनांक

Encl - 25

(50) 60

वी.एन. दुबे
आई.ए.एस.
आयुक्त / अध्यक्ष

आयुक्त एवं पदेन ... M-com
: 2502203
कार्यालय : 2501144
: 2502330
निवास : 2352444
फैक्स (0542) 2212345
आयुक्त प्राधिकरण सदन, वाराणसी।
दिनांक 24.3.05

प्रिय महोदय,

गंगातटीय तट पर स्थित दरभंगा पैलेस के सम्बन्ध में अपने अ.शा.प.सं.-1201/आठ-3-05-45 जेम्य/2005 दिनांक: 21 मार्च, 2005 का सन्दर्भ ले, जिसके माध्यम से विशेष सचिव, श्री राज्यपाल के पत्र दिनांक: 18.03.05 के अनुक्रम में महामहिम श्री राज्यपाल को वस्तुस्थिति से अवगत कराने हेतु आख्या की अपेक्षा की गई। उक्त के सम्बन्ध में सचिव, वाराणसी विकास प्राधिकरण, वाराणसी की मूलरूप में संलग्न विस्तृत आख्या के अनुसार तथ्यात्मक टिप्पणी निम्नवत् है :-

आराजी संख्या-11513 मौजा-शाहरुखाश पर स्थित दरभंगा पैलेस के अन्तर्गत इनटैक एवं अन्य सम्बन्धित विभागों की अनापत्ति प्राप्त कर वर्ष 1997 में एक हेरिटेज होटल के निर्माण हेतु मानचित्र स्वीकृत किया गया था।

वर्ष 2003 में वरिष्ठ संरक्षण सहायक, भारतीय पुरातत्व सर्वेक्षण विभाग उप अंचल, वाराणसी, वाराणसी द्वारा किये जा रहे कार्यों पर आपत्ति प्रकट की गई तथा भारतीय पुरातत्व सर्वेक्षण विभाग से अनुमति प्राप्त करके ही निर्माण कार्य किये जाने की अपेक्षा की गई। तद्क्रम में उ0प्र0 नगर नियोजन एवं विकास अधिनियम, 1973 की सुसंगत धाराओं के अधीन नोटिस जारी करते हुए निर्माण स्थल को सील कर दिया गया।

भू-स्वामी द्वारा पुनः भारतीय पुरातत्व सर्वेक्षण, पटना अंचल, जे.सी. रोड, पटना द्वारा निर्माण किये जाने के सम्बन्ध में निर्गत की गई अनापत्ति संख्या-1/54-04-1-2500 दिनांक: 20 जुलाई, 04, इनटैक की स्थानीय निरीक्षण आख्या एवं स्थल के अनुमोदित मानचित्र के साथ निर्माण की अनुज्ञा हेतु मानचित्र प्रस्तुत किया गया जिसमें परीक्षणोपरान्त अपर श्री बीर सिंह द्वारा आदेश अपील 540/0 से 1 2001 वाराणसी/10 दिनांक: 11 अप्रैल, 01 के प्रस्तर-2 में निहित प्राविधानों के अनुक्रम में इनटैक से प्रत्येक तीन माह पर स्थानीय निरीक्षण कराकर रिपोर्ट उपलब्ध कराने, स्थल पर किये जाने वाले निर्माण को पूर्वत मेन्टेन रखने भारतीय पुरातत्व सर्वेक्षण विभाग द्वारा निर्गत की गई अनापत्ति निहित शर्तों का शतप्रतिशत अनुपालन सुनिश्चित करने एवं स्वीकृत मानचित्र के विरुद्ध निर्माण करने पर प्रदत्त स्वीकृति स्वतः निरस्त समझे जाने की शर्तों के अधीन 2000 शुल्क एवं अन्य शुल्कों को मदों को जमा कराकर दिनांक: 03.03.05 को स्वीकृति प्रदान की गई।

उपरोक्त में वर्णित निरीक्षण कराया गया। स्थल पर पाया गया कि अतिरिक्त काम कोई नहीं किया जा रहा है।

वर्णित स्थितियों में भारतीय पुरातत्व सर्वेक्षण विभाग के धरोहरों के संरक्षण, सम्वर्द्धन के लिए निर्धारित नियमों का उल्लंघन नहीं किया गया अपितु उनकी अनापत्ति एवं इनटैक के परामर्श के दृष्टिगत ही शासनादेश दिनांक: 11 अप्रैल, 01 में निहित प्राविधानों के अनुक्रम में स्वीकृति प्रदान की गई।

संलग्नक - उपरोक्तानुसार।

श्री रामकृष्ण प्रसाद
विशेष सचिव,
आवास एवं शहरी नियोजन अनुभाग-3
उत्तर प्रदेश शासन, लखनऊ।

भवदीय,

(वी. एन. दुबे)

वाराणसी में गंगा नदी के तट पर स्थित दरभंगा पैलेस के सम्बन्ध में

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आराजी संख्या 11513 मौजा शहरखास, भवन संख्या– 20/17 ए.बी.सी. एवं डी. व भवन संख्या डी. 20/16 दरभंगा घाट वाराणसी पर स्थित दरभंगा पैलेस में प्राधिकरण बोर्ड के संकल्प संख्या–5 दिनांक: 04.01.97 द्वारा वाराणसी नगर में गंगा नदी के किनारे घाटों पर स्थित पुराने भवनों के निर्माण तथा परिवर्तन एवं परिवर्धन के सम्बन्ध में निर्धारित की गयी नीति/मार्गस के अनुसार एक हेरिटेज होटल भवन के निर्माण/परिवर्तन/परिवर्द्धन का भवन मानचित्र संख्या–4/96/होटल/विन्यास दिनांक: 26.04.97 को स्वीकृत किया गया था।

यद्यपि कि उक्त मानचित्र प्राधिकरण बोर्ड द्वारा निर्धारित नीति/मार्गस के परिप्रेक्ष्य में निर्देशानुसार सभी सम्बन्धित से अनापत्ति एवं इनटैक से परामर्श प्राप्त कर स्वीकृत किया गया था परन्तु शासन के पत्र संख्या–124/सी.एम./9–आ–3–2000–127 कैम्प/99 दिनांक: 31 जुलाई, 2000 के निर्देश/प्राविधानों के अनुसार गंगा नदी के किनारे ऐसे स्थलों का जो धार्मिक मान्यताओं से जुड़े है, जहाँ का स्वरूप प्रमुखतः तीर्थ है, वहाँ होटल भवन के अनुमन्यता न होने के कारण शासनादेश के अनुपालन में दिनांक: 27.02.01 को पूर्व स्वीकृति निष्प्रभावी करते हुए स्थल पर किसी भी प्रकार का कार्य न करने हेतु निर्देशित कर दिया गया। पुनः शासनादेश संख्या–840/9–आ–3–2001–127 कैम्प/99, दिनांक: 11 अप्रैल, 01 में निहित प्राविधानों/शिथिलीकरण के अनुक्रम में दिनांक: 30.05.01 को पूर्व स्वीकृत मानचित्र संख्या–4/96, होटल/विन्यास दिनांक: 26.04.97 जो हेरिटेज होटल भवन के लिए स्वीकार किया गया था, को पुनः प्रभावी कर दिया गया।

निर्माण कार्य करते समय पूर्व स्वीकृत भू–आच्छादन, एफ.ए.आर. एवं भवन की ऊँचाई जिसे मौजूदा भवन के सापेक्ष इनटैक द्वारा अनुमोदित किया गया था, के अन्तर्गत ही कतिपय विचलन किये जाने की शिकायत प्राप्त हुई, जिसके क्रम में परीक्षणोपरान्त उ0प्र0 नगर नियोजन एवं विकास अधिनियम, 1973 की धारा–27, 28 के अन्तर्गत नोटिस जारी की गयी तथा मानचित्र निरस्तीकरण हेतु भी कारण बताओं नोटिस जारी की गयी जिस पर भवन स्वामी द्वारा माननीय उच्च न्यायालय में एक रिट याचिका संख्या 43661/2001 दायर की गयी। उक्त रिट याचिका में माननीय उच्च न्यायालय द्वारा अपने आदेश दिनांक: 13.05.02 के माध्यम से आवेदक का प्रत्यावेदन निस्तारित किये जाने का निर्देश पारित किया गया। आवेदक द्वारा अपने प्रत्यावेदन दिनांक: 20.06.02 के माध्यम से सन्दर्भित तथ्यों का उल्लेख करते हुए रोके गये कार्यों को पुनः प्रारम्भ करने की अनुमति माँगी गयी, तदनुक्रम में शासनादेश संख्या–840/9–आ–1–2001–127–कैम्प/99 दिनांक: 11 अप्रैल, 01 के क्रम में प्रमुख सचिव, आवास, उत्तर प्रदेश शासन, लखनऊ को सम्बोधित आवेदक के प्रत्यावेदन दिनांक: 20.06.02 पर उनके आदेश दिनांक: 20.08.01 (संलग्नक–1) तथा माननीय उच्च न्यायालय में दायर की

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गयी याचिका संख्या–45661/2001 में पारित आदेश दिनांक: 13.05.02 एवं इनटैक द्वारा दी गयी सहमति/परामर्श दिनांक: 08.01.03 (संलग्नक–2) के आलोक में इस कार्यालय के पत्र संख्या 4/96/होटल/विन्यास दिनांक: 31.03.03 द्वारा पूर्व स्वीकृत मानचित्र दिनांक: 26.04. 97 की अवधि दिनांक: 25.04.04 तक इस शर्त के साथ बढ़ाया/नवीनीकृत की गयी कि इनटैक द्वारा नियमित अन्तराल पर सर्वेक्षण तथा किसी भी स्तर पर प्रतिकूल अथवा गलत तथ्य पाये जाने की दशा में प्राप्त अनुमति/नवीनीकरण स्वतः निरस्त समझी जायेगी।

इसी मध्य वरिष्ठ संरक्षण सहायक, भारतीय पुरातत्व सर्वेक्षण विभाग उप अंचल, सारनाथ, वाराणसी द्वारा पत्र संख्या–अवैध/अतिक्रमण/वा./1626, दिनांक: 21.06.03 के माध्यम से महानिदेशक, भारतीय पुरातत्व सर्वेक्षण जनपथ, नई दिल्ली से अनुमति प्राप्त होने के उपरान्त ही निर्माण कार्य किये जाने की अपेक्षा की गई जिसके फलस्वरूप पुनः उ0प्र0 नगर नियोजन एवं विकास अधिनियम, 1973 की धारा–27, 28 के अन्तर्गत नोटिस जारी की गई तथा तुसंगत धाराओं के अधीन निर्माण स्थल सील कर दिया गया।

आवेदक द्वारा पुनः दिनांक: 26 जुलाई, 04 को इनटैक की स्थलीय निरीक्षण आख्या (संलग्नक–3) एवं इनटैक द्वारा अनुमादित मानचित्र की प्रतियों के साथ–साथ भारतीय पुरातत्व सर्वेक्षण पटना अंचल जेसी रोड (अंटा घाट), पटना द्वारा निर्गत की गई अनापत्ति दिनांक: 20 जुलाई, 04 (संलग्नक–4) को संलग्न करते हुए निर्माण की अनुज्ञा हेतु शमन/प्रस्तावित मानचित्र प्रस्तुत करने के लिए पैमाईश हेतु सील खोले जाने का अनुरोध किया गया, जिसके फलस्वरूप शमन/प्रस्तावित मानचित्र प्रस्तुत करने तथा स्थल पर कोई नया निर्माण न किये जाने की शर्त पर दिनांक: 20.01.05 को स्थल पर लगाई गयी सील खोल दी गई। आवेदक द्वारा दिनांक: 24.1.05 को शमन/प्रस्तावित मानचित्र प्रस्तुत करते हुए निर्माण की अनुज्ञा हेतु प्रत्यावेदन प्रस्तुत किया गया।

आवेदक द्वारा प्रस्तुत किये गये मानचित्र के परीक्षणोपरान्त चूँकि स्थल पर किया गया विचलन पूर्व स्वीकृत मानचित्र एवं इनटैक द्वारा दिये गये परामर्श/अनुमोदित मानचित्र के सापेक्ष मौजूदा भवन के अनुसार स्वीकृत भू–आच्छादन, एफ.ए.आर. एवं भवन के ऊँचाई के अन्तर्गत संरक्षण एवं संवर्धन के निमित्त जीर्णोद्धार/पुनर्निर्माण से सम्बन्धित था, अतः वाराणसी नगर में गंगा नदी के किनारे घाटों पर स्थित पुराने भवनों के निर्माण/पुर्ननिर्माण/परिवर्द्धन तथा परिवर्तन के सम्बन्ध में नीति निर्धारण एवं नार्म्स सम्बन्धी प्राधिकरण के संकल्प संख्या–5 दिनांक: 04.01.97 शासनादेश संख्या–840/9–आ –3–2001–127 कैम्प/99 दिनांक: 11 अप्रैल, 01 एवं इनटैक के परामर्श/अनुमोदित मानचित्र तथा भारतीय पुरातत्व सर्वेक्षण पटना अंचल, जेसी, रोड पटना द्वारा निर्गत की गई अनापत्ति संख्या–1/54/04–एन.–2506 दिनांक: 20 जुलाई, 04 के आलोक में शमन शुल्क एवं अन्य

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नदों के शुल्क जमा करवाते हुए निम्नलिखित शर्तों के अधीन दिनांक: 03.03.05 को प्रस्तुत किये गये शमन/प्रस्तावित मानचित्र को स्वीकृत किया गया –

1. आवेदक को प्रत्येक तीन माह पर इनटैक से स्थल निरीक्षण कराकर रिपोर्ट प्राधिकरण को उपलब्ध कराया जाना होगा।
2. आवेदक को स्थल पर किये जाने वाले निर्माण को पूर्वत् निर्माण के अनुरूप ही रक्खा जाना होगा।
3. किसी भी दशा निर्माण स्वीकृत मानचित्र के विरूद्ध होगा तो स्वीकृत किया हुआ मानचित्र स्वतः ही निरस्त समझा जायेगा।

भारतीय पुरातत्व सर्वेक्षण पटना आंचल, जेसी रोड पटना के अनापत्ति प्रमाण पत्र संख्या–1/54/04–एम–2505 दिनांक: 20 जुलाई, 04 के अन्तर्गत निहित शर्तों का अनुपालन शतप्रतिशत किया जाना अनिवार्य होगा।

वर्तमान में स्थल का निरीक्षण कराया गया। स्थल पर मात्र प्लास्टर के अतिरिक्त अन्य कोई कार्य नहीं किया जा रहा है।

वर्णित स्थितियों में भारतीय पुरातत्व सर्वेक्षण विभाग के धरोहरों के संरक्षण, संवर्धन के लिए निर्धारित नियमों का उल्लंघन नहीं किया गया है अतिएव उनकी अनापत्ति एवं इनटैक की परामर्श के दृष्टिगत ही शासनादेश दिनांक: 11 अप्रैल, 01 में निहित प्राविधानों के अनुक्रम में स्वीकृति प्रदान की गई है।

(आर. विक्रम सिंह)
सचिव

22-3-05

Encl - 26

GOVERNMENT OF INDIA
ARCHAEOLOGICAL SURVEY OF INDIA
OFFICE OF THE CONSERVATION ASSISTANT
SUB-CIRCLE, SARNATH VARANASI (U.P.)

To,

The Incharge,
Police Station
Dashaswmedh, Varanasi

Sub:- Request to lodge F.I.R. against un-authorised construction being carried out by S/Shri Mahendra Prasad, Shah Attorney to Apporb Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar, Kamle Nath, Sankat Mochan Marg Varanasi (U.P.) in building No.D-20/17A, 17B, 17 C and 16 on plot No.11513, Jhehar Khas, Darbhanga Ghat Varanasi (U.P.)

Sir,

With reference to above I am to inform you that the above Owner had been given permission for Restoration, Conservation and Renovation of the dilapidated building as cited in the above plot vide Order No.1/54/04-M-2565 dated 20/07/2004 (copy enclosed) from the Superintending Archaeologist, Archaeological Survey of India, Patna Circle, Patna (Bihar). The above party has started constructions by ignoring our rules as laid in Sl.No.IV in form No. III (copy enclosed). This new constructions if not stopped, shall certainly damaged the Ancient View of the Monument.

You are, therefore, requested kindly to take immediate action towards stopping further constructions in the above building at Darbhanga Ghat Varanasi. I hope you would be extending full co-operation towards stopping the un-authorised construction at Darbhanga Ghat in public interest.

Yours faithfully

(P. K. TRIPATHY)

NO. [illegible] Dated 23/04/2005

Copy forwarded for information and necessary action to :-

1-The Sr. Supdg. of Police, Varanasi
2-The Supdg. Archaeologist, A.S.I., Patna Circle, Patna-(Bihar)
3-The Secretary V.D.A.
4-The District Magistrat Varanasi.

(P.K. TRIPATHY)

Encl-27

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वाराणसी विकास प्राधिकरण
वाराणसी

(नोटिस, अन्तर्गत् धारा-२७ उत्तर प्रदेश नगर नियोजन एवं विकास अधिनियम १९७३)

संख्या ..... ज०आ०(अ०)..... वार्ड दिनांक 16/10/15

श्रीमान्/श्रीमती महेन्द्र कुमार शाह पुत्र नं.
श्री अपूर्व कुमार, श्री विवेक कुमार,
श्री अरुण कुमार, श्री मनीष कुमार
D 20/15A, D 20/15B, D 20/15C सी
D 20/16, SMPNo. 11513 मौजा-शिवपुर

चूँकि आपने विकास प्राधिकरण की अनुज्ञा प्राप्त किये बिना जैसा कि उत्तर प्रदेश नगर नियोजन तथा विकास अधिनियम १९७३ की धारा-१४ के अन्तर्गत् अपेक्षित है तरना मुख्य मार्ग मुहल्ले में स्थित भवन संख्या D 20/15A, 15B, 15C एवं 16, SMPNo. 11513 में निर्माण कार्य प्रारम्भ किया है/कर रहे हैं/पूर्ण कर लिया है।

सारनाथ एस०एस० आई० द्वारा अवलोकन कराया गया है कि आप द्वारा स्थल पर नियमों के विरुद्ध अनधिकृत निर्माण कार्य कराया जा रहा है.

अतः अपेक्षित है कि आप दिनांक 23/4/15 को 11 बजे विकास प्राधिकरण कार्यालय में अधोहस्ताक्षरकर्ता के समक्ष उपस्थित होकर कारण बतलावें कि क्यों न आप द्वारा किये गये उपरोक्त निर्माण कार्य को हटा दिया जाय। आप स्वयं या आपके अधिकृत प्रतिनिधि उपस्थित हो सकते हैं।

नोट- उपरोक्त अधिनियम की धारा (१) की ओर आपका ध्यान आकर्षित किया जाता है जिसके अनुसार अधिनियम की १४ के अन्तर्गत् बिना अनुमति प्राप्त किये निर्माण कार्य करने पर दस हजार रूपये तक का अर्थदण्ड दिया जा सकता है और अपराध जारी रहने की दशा में अपराध के लिखित प्रथम दोष सिद्ध के पश्चात् प्रत्येक ऐसे दिन के लिखित जिसमें कि अपराध जारी रहे ५०० रूपये प्रतिदिन के हिसाब से और भी अर्थदण्ड लगाया जा सकता है।

विशेषाधिकारी .....

कृते उपाध्यक्ष
वाराणसी विकास प्राधिकरण
वाराणसी।

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Encl-29, 66 126

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL SIDE

ORIGINAL JURISDICTION

DATED: ALLAHABAD THE: 6.7.2005

PRESENT

THE HON'BLE DILIP DR. B.S CHAUHAN ....JUDGE.

THE HON'BLE DILIP GUPTA ....JUDGE.

CIVIL MISC.WRIT PETITION NO. 31340 OF 2005

ORDER ON THE PETITION OF APOORVA KUMAR AND OTHERS

INRE

1. Apoorva Kumar and 3 others ....Petitioners

2. State of U.P and 6 other .....Respondents

M.

+5 29
177
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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL MISC. WRIT PETITION NO. OF 2005

(Under Article 226 of the constitution of India)

District : Varanasi

....

1. Apoorva Kumar
2. Anoop Kumar

Sons of Shri Birendra Kumar
Resident of 70, new Agra, U.P. at
Present Hotel Clarks, Amer, Jaipur.

3. Vivek Kumar
4. Manish Kumar

Sons of Shri Arvind Kumar
Resident of 1 Ahiri Pukur Road,
Beni Ganj, Calcutta through their Duly
Constituted Attorney Shri Mahendra Prasad
Son of Late Sri Rama Prasad Shah, resident
Of Kamla Kutir, B-36/8 Sankata Mochan
Marg Varanasi.

.... **Petitioners**

Versus

1. State of Uttar Pradesh through Secretary
Nagar Vikas U.P. at Lucknow.

2. Conservation Assistant , Archaeological
Survey of India, Sub Circle Sarnath,
Varanasi

3. Superintending Archeologist

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Archaeological Survey of India,
Patna Circle Patna-1
(Bihar)

4. District Magistrate, Varanasi

5. Senior Superintendent of Police
Varanasi.

6. Incharge Police Station, Dashasmedh
Varanasi.

7. Varanasi Development, Authority,
Varanasi through its Chairman.

..... **Respondents.**

1.

1.

Court No. 34

Civil Misc. Writ Petition No. 31340 of 2005
Apoorva Kumar and others Vs. State of U.P. and others.

....

Hon'ble Dr. B.S. Chauhan, Judge
Hon'ble Dilip Gupta Judge.

This Writ petition has been filed for quashing the impugned order dated 8.4.2005 passed by the Conservation Assistant Archaeological Survey of India, Sub Circle Sarnath, Varanasi respondent no.2 by which directions have been issued to the Incharge Police Station, Dashaswamegh, Varanasi to taken immediate stops for stopping further constructions made by the petitioners in the building.

The facts and circumstances giving rise to the present petition are that the petitioners purchased the property in dispute bearing Municipal No. D-20/17A, 17B, 17C, and 16 on plot No. 11513, Shahar Khas, Darbahgna Ghat Varanasi on 24.5.1995. The said property is situate at a distance of less than 300 meters from the "Jai Singh Observatory" which has been declared protected monument under section 3 of the Ancient Monuments and Archeological Sites and Remains Act 1958. The petitioners have alleged that the building was in a

dilapidated condition and, therefore, in order to undertake construction for the restoration, conservation and renovation, they applied for grant of license before the Archeological Survey of India in Form No. VIII on 20.7.2004. At Sl. No. 4 in Form No. VIII it was mentioned as follows:-

Nature and details of the proponed mining Restoration, Conservation & Renovation of operation/ Construction in respect of which Darbhanga Palace (H.N.D-2017A,B,C & D permission is sought.

20/16 at Darbhagna Ghat (Settlement)
plot No.11513 Mauza-Shahar Khas)

The Archeological Survey of India by means of the communication dated 20.7.2004 intimated the petitioners that the license for restoration, conservation and renovation of the dilapidated building, which was at a distance of 266 meters from the protected limits of the centrally protected monument was being was being issued subject to the condition that the building should not be used for any purpose other than that mentioned by the petitioners at Sl.No. 4 in form No. VIII. It was further stated that the petitioners should adhere of the terms and conditions laid down in the license enclosed with the letter and in the event of any violation of the terms and conditions, suitable action shall be taken to stop the construction and for cancellation of

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the license. In the licence enclosed along with the aforesaid letters, it was clearly stipulated as follows:-

a. Original height and outer appearance should be maintained.

b. Any addition or alternation should be at par with its original plan and texture.

c. Hoarding of any type is not permitted on/above the building observation the view of the monument.

d. No structure of historical importance, which has been in existence for more than 75 years, should be demolished.

e. Appropriate breathing space should be ensured around the building for better maintenance of the environment.

f. The license is only for the purpose applied for for".

The impugned order dated 8.4.2005 mentions that the petitioners had started constructions by ignoring the conditions set out at Sl. No. 4 in Form No. VIII and, therefore, the Incharge of the Police Station Must take immediate steps for stopping further constructions.

We have heard Sri R.N. Singh and Sri Ravi Kiran Jain, learned Senior counsel for the petitioner, Sri K.C. Sinha, learned Assistant Solicitor General of India appearing for respondent nos. 2 and 3, Sri Ajit Kumar Singh, learned

counsel appearing for respondent No.7 and Sri Adish Chandra Aggarwala, learned Additional Advocate General for respondent nos. 1,4,5 and 6.

Learned Senior Counsel Sri R.N. Singh appearing for the petitioners has submitted that the petitioners have not raised any construction or alteration violation of the licence granted by the Archeological Survey of India.

Sri U.N. Sharma, Learned Senior Counsel who was requested to assist the court and the other learned counsel for the respondents submitted that as to whether any condition of the licence had been violated for not is a question of fact which cannot be determined by this court while exercising jurisdiction under article 226 of the constitution. They therefore, submitted that it was desirable that the Director General, Archeological Survey of India, who is the competent Authority under Rules 35 and 36 of the Ancient Monuments and Archeological Sites and Remains Rules, 1959 to pass any appropriate order including the order of cancellation in case any condition or term is violated, may be directed to examine the issue and pass appropriate order in accordance with law as to whether any construction or

PS 143 73

alteration had been made in violation of the terms of the licence.

In view of the above, the Director, General Archeological Survey of India shall examine the issue by either inspecting the building himself or by some responsible officer of his choice. A report may then be prepared after affording an opportunity to the petitioners and appropriate orders may be passed. It will be open to him to hear any other person on behalf of the State of Uttar Pradesh. The Director General, Archeological Survey of India may complete this exercise as early as possible preferably within a period of four weeks from the date a certified copy of this order is produced by the petitioners before him.

For a period of four weeks from today, the order dated 8.4.2005 may be kept in abeyance but status quo as on date shall be maintained in respect of the disputed property. During this period the petitioners shall not proceed with the construction.

Learned Counsel for the petitioners submitted that the licence granted was valid for a period of one year and since the petitioners had been directed to stop the constructions,

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the period of validity of the licence may be suitably extended. For the said purpose, in case the Director General, Archeological Survey of India Passes and order in favour of the petitioners, then the petitioners may also move an application for extension of time which shall be considered in accordance with law and appropriate orders may be passed.

Subject to the observations made above, the writ petition is disposed of.

Dated: 6.7.2005

Sd/- Dr. B.S. Chauhan Juudge
Sd/- Dilip Gupta Judge.

Encl-29 75

REGISTERED POST

NO. 1-54-04-m4653

Government of India

Archaeological Survey of India

Patna Circle, J.C. Road

Patna Dated 30 September 2005

NOTICE

WHERE AS Sri Mahendra Prasad Shah, Attorney to Apoorva Kumar, Vivek Kumar, Anoop Kumar and Manish Kumar had applied for a license on 19.9.2003 for carrying out restoration, conservation & renovation of the dilapidated building No. D-20/17A B.C&D 20/16 on plot number 11513, Sehar Khas, Darbhanga Ghat, Varanasi (U.P.) which falls within the regulated area of a national monument namely Jai Singh Observatory, Man Mahal Varanasi U.P.

AND WHEREAS the above license was subjected to the terms & conditions specified therein.

AND WHEREAS the terms and conditions laid down in the license were violated by a not maintaining the original height and outer appearance (b) addition and alteration not conforming to the original plan and texture. (c) Partly demolishing the ancient structure, (d) not providing adequate breathing space on south-west corner, (e) making constructions apparently meant for purpose other than applied for,

AND WHEREAS violations of the terms and conditions of the license attract Rule 33 (b) of the Ancient Monuments and Archaeological Sites & Remains Rules 1959.

AND THEREFORE, in exercise of the powers vested under rule 30(1) of the Ancient Monuments and Archaeological Sites & Remains Rules 1959 the undersigned hereby directs the owner / occupier to remove the unauthorized constructions which has been executed in contravention

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of the terms of license, within one month from receipt of this order, failing which it will be caused to be removed and the owner / occupier shall be liable to pay the cost of such removal in addition to the legal prosecution for violating statutory provisions.

Superintending Archaeologist

To, Sri Mahendra Prasad Shah
Attorney to Apoorva Kumar,
Vivek Kumar, Anoop Kumar and
Manish Kumar
Kamla Kutir
Sankat Mochan Marg
Varanasi (Uttar Pradesh)

Encl-30

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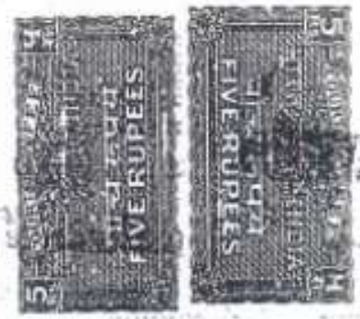
(10)

Ajay Kumar Singh
Ashish Kumar Singh
Advocate
Marbal Hall, High Court,
Allahabad
Resident of 57/8 B.K. Banerjee
Marg Beli Road,
Allahabad

04/24
21.1.08

Date of Application 23-1-08
Date of Receipt 24-1-08
Date of Delivery 24-1-08
Issuing Clerk
MV



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Munishwar Tiwari
Notary, Varanasi

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CIVIL SIDE
ORIGINAL JURISDICTION

78

DATED ALLAHABAD THE : 18.01.2008.

PRESENT

THE HON'BLE AMITAVA LALA, ...JUDGE.
THE HON'BLE V.C. MISRA, ...JUDGE.

CIVIL MISC. WRIT PETITION NO.71449 OF 2005.

Order on the petition of Appoorva Kumar and others.

- - - - - - - -petitioners.

IN RE :

1. Appoorva Kumar
2. Anoop Kumar
   sons of Shri Birendra Kumar
   resident of 70, New Agra,
   U.P. at present Hotel Clarks, Amer Jaipur.
3. Vivek Kumar
4. Manish Kumar
   sons of Shri Arvind kumar
   Resident of 1,Ahiri Pukur Road
   Beni Ganj Calcutta through their Duty
   Constituted attorney Shri Mahendra Prasad
   Shah son of Late Shri Ram Prasad Shah
   Resident of Kamla Kutir, B-36/8
   Sankata Mochan Marg, Varanasi.
   . . . . . .petitioners.

V E RSS U S

1. Union of India
   through Secretary Department of Cultural
   Archeological Survey of India
   Janpath New Delhi.
2. Director General
   Archeological Survey of India
   Janpath New Delhi.

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Manishwar Tiwari
Notary, Varanasi

2/c

3. Superintending Archaeologist
Archeological Survey of India
Patna Circle, Judges Court, Road
Patna (Bihar).

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4. Conservation Assistant
Archaeological Survey of India
Sub Circle Sarnath, Varanasi.

5. State of Uttar Pradesh
through its Secretary Nagar Vikas Uttar
Pradesh at Lucknow.

. . . . . .Respondents.

Counsel for the Petitioners : Sri V.B. Singh, Sri B.D. Mandhyan
Sri Ashish Kumar Singh
Sri Ajay Kumar Singh
Sri Satish Mandhyan

Counsel for the Respondents : Sri K.C. Sinha
ASSTT. SOLICITOR GENERAL OF INDIA
Sri Sunil kumar Srivastava
S.C.

BY THE COURT

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Manishwar Tiwari
Notary, Varanasi

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Civil Misc. Writ Petition No. 71449 of 2005.

Apoorva Kumar and others. ....Petitioners.

Versus

Union of India and others. .... Respondents.

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Present:

(Hon'ble Mr. Justice Amitava Lala and Hon'ble Mr. Justice V.C. Misra)

Appearance

For the Petitioners : Sri V.B. Singh, Sr. Advocate,
Sri Ajay Kumar Singh &
Sri Ashish Kumar Singh.

For the Respondents : Sri K.C. Sinha, Asstt. Solicitor General of India,
Sri Sunil Kumar Srivastava.

Amitava Lala, J.— By this writ petition under Article 226 of the Constitution, the petitioners have prayed for issuance of a writ in the nature of Certiorari quashing the impugned order No. 1/54/04-M-4653 dated 30th September, 2005 passed by the Superintending Archaeologist, Archaeological Survey of India, the respondent no. 3 herein and for other suitable directions which this Court may deem fit and proper in the facts and circumstances of instant case.

The facts of this case lie in a narrow compass. A private house known as "Darbhanga Palace" situates on the western bank of river Ganges, is old and dilapidated. The petitioners purchased this property from the original owner (private party or parties) for commercial purpose i.e. to start the hotel business etc. The Varanasi Development Authority,being the authority competent, had sanctioned necessary plan for construction/renovation etc. Appropriate architectural certificate was also obtained by the petitioners for the purpose of necessary work. Petitioners wanted to preserve its old heritage look but for the better preservation,

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wanted remodeling in various places of the building, particularly inside the premises. The State Government had directed the Varanasi Development Authority by its oder dated 20th August, 2001 for consulting Indian National Trust for Art and Culture Heritage (in short hereinafter referred to as 'INTACH'). Several reports including the report of a professor, Prof. A.G. Krishna Menon of INTACH, are also available in the record in support of better construction of that house keeping its ambience towards river Ganges as it is. According to us, this is not a new dimension of thinking but possibly a new dimension in the State of Uttar Pradesh. We can take judicial notice about various such preservations made available for the commercial purposes keeping ethnic outlook as it is, particularly in the State of Rajasthan. Therefore, creativity is not a discourageable idea at all. The respondent authorities of Archaeological Survey of India, raised objections with regard to the said construction in particular, about one 'Jai Singh Observatory' situates on the western side of river Ganges, but at a distance of about 300 meters from that old and/or dilapidated private building. It is common knowledge that who wants to visualise various bathing Ghats on river Ganges at Varanasi by motor-launch or boat, they will be able to find that several houses are built in between these two places. Location wise, the observatory stands on right hand side, when Darbhanga building situates on the left hand side from river Ganges. So many Ghats including Dashashwamedh Ghat stand in between these two places. Various photographs are also part and parcel of the record, from which it also appears so. However, when the respondent authorities are saying that the distance between 'Jai Singh Observatory' and 'Darbhanga Palace' is 266 meters, the petitioners say it is 282 meters. Therefore, admittedly it is less than 300 meters.

Against this background, we would like to clarify the legal

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Manishwar Tiwari
ary, Varanasi

position in this regard and for this purpose we have to see the object and reasons of The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short 'the Act'). The Act has been enacted 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. Therefore, in a nutshell, the objective sought to be achieved by the Act is,preservation of ancient and historical monuments and archaeological sites and remains of national importance and not the private houses. Admittedly, the house in question i.e. "Darbhanga Palace" does not come within the purview of preservations for the purpose of the Act. Therefore, the yardstick applicable to historical and ancient monuments does not apply to it at all. Of course, regulatory yardstick, not prohibitory, can be applicable in an appropriate case.

According to the respondents, as per S.O. 1447 dated 15.5.1991, which has been published in the official Gazette No. II Section 3 sub-section (ii) dated 25.5.1991, an area of 100 meters around the monument or monumental building is a prohibited area and beyond that an area of 200 meters around it, is a regulatory area. No doubt, the law makes it clear in what way a monument will be preserved. But law never said anywhere how a private building in or around the regulatory area of any monument or monumental building will be regulated. Unless, of course, it is disturbing in any way the monument, permission for remodeling or construction, if any, of a private house is the domain of concerned development authority or the Municipal Commissioner. Therefore, the authorities hereunder can not be allowed to extend the scope other than the scope in what way such private house is disturbing the rnonument or monumental building. The observatory has a clock which can be

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Notary, Varanasi

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read on the basis of the sun-rays. River Ganges flows from south to north when sun rises on the eastern side i.e. opposite side of river Ganges when both, the building and the observatory, situate on the western side. Therefore, apparently there is no obstruction of sun-rays at all. That apart, several houses almost of the similar height, if not more, situate in between these two premises. The authorities, in the garb of an inspection under an order dated 6th July, 2005 passed by a Division Bench of this Court in Writ Petition No. 31340 of 2005 (Apoorva Kumar and others Vs. State of U.P. & others), wanted to intervene in respect of remodelling or reconstruction of the structure of the building in the name of regulatory power within 200 meters over and above 100 meters i.e. prohibitory area. Surprisingly, the report, which has been furnished by such authority to the petitioners as annexed with the writ petition, speaks that **on the eastern side and rear side the building is not prohibiting anything. So far as northern side is concerned, the same view has been observed. So far as western side is concerned, the report is silent.** Therefore, it can be safely presumed that there is nothing to say with regard to western side of the building since all the buildings of the similar heights, if not higher, stand on the western side of the river Ganges in between these two premises. From the architectural report, it appears that by remodelling or restructure, it has become little lower than the original height. However, we do not want to enter into such factual controversy. What we require hereunder in disposing the writ petition is to declare whether the action on the part of the authority is beyond its jurisdiction. Apart from any disturbance caused in respect of the sun-rays due to construction of the building, no objection can be adhered to by the authority. The authority appears to have committed mistake by proceeding as if 'Jai Singh Observatory' was not the monument but 'Darbhanga Palace', a

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Manishwar Tiwari
Notary, Varanasi

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private house, is the monument.

Therefore, in totality, we are of the view that the order of demolition or for any purpose interfering with the cause of construction by such authority, should be quashed and is accordingly quashed. As a result whereof, the petitioners will be entitled to remodel or restructure the house with the appropriate sanction of Varanasi Development Authority and/or Municipal Corporation whosoever is competent to do so, if not already obtained.

Thus, the writ petition is disposed of.

However, no order is passed as to costs.

(Justice Amitava Lala)

I agree.

(Justice V.C. Misra)

Dt./- 18th January, 2008

SKT/KST/-

TRUE COPY

24-1-08

Section Officer

Copying 'A' Section

High Court, Allahabad

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Attest. 1

Munishwar Tiwari

Advocate, Varanasi

24-1-08

C/C.

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Encl-31

Date : 30.01.2008

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To,
The Vice Chairman
Varanasi Development Authority
Varanasi

Sub:- Construction of building on House No. D-20/17A, D-20/17B & D-20/16, SM Plot No-11513, Mauza- SAharkhas at Darbhanga Ghat.

Dear Sir,
Earlier, we have received V.D.A. Notice no. D-14/05/Notice/Dt.16.04.2005 regarding objection raised by ASI (Archeological Survey of India) about construction against the ASI Laws. The work was stopped by us. Subsequently we received the order from ASI, dt.30.10.2005 to remove the unauthorized construction from the site. Then, we filed the petition in the High Court against the ASI order.

Now the judgement of High Court is received by us dt. 24.01.2008 in our favour, quashing the order issued by ASI for demolition, and allowing us to construct as per plan approved by V.D.A.

We are enclosing herewith the copy of the High court judgement for your reference. Kindly dispose the notice issued by V.D.A. dt.16.04.2005 due to ASI objections.

Sir, we had been constructing the building as per approval letter dt. 3.03.2005. And now we are going to take up the construction as per approved plan. Sir, if needed, you may please inspect the site.

With Regards,

(Arvind Kumar)
Attorney of Shri Approva Kumar,
Shri Vivek Kumar, Shri Anoop Kumar
& Shri Manish Kumar

ADDRESS:
SUNDER VILLA
S-10/252, MAQBOOL ALAM ROAD
VARANASI-2

30/1/08

c/c OSD
c/o Secretary

31/1/08

Encl -32

सेवा में,

1– उपाध्यक्ष, वाराणसी विकास प्राधिकरण,

2– सचिव, वाराणसी विकास प्राधिकरण,

3– ओ.एस.डी., वाराणसी विकास प्राधिकरण ।

महोदय,

कृपया मेरे पत्र दिनांक 31.01.2008 तथा 08.04.2008 का अवलोकन करें ।

जिनके द्वारा आपको अवगत कराया गया है कि माननीय उच्च न्यायालय इलाहाबाद ने याचिका सं. 71449/2005 अपूर्व कुमार वगैरह बनाम यूनियन ऑफ इंडिया/ए.एस.आई. तथा उत्तर प्रदेश सरकार जरिए सचिव नगर विकास, में यह निर्णय दिया है कि ए.एस.आई. को दरभंगा पैलेस के जिर्णोद्धार तथा पुर्ननिर्माण में किसी भी प्रकार का हस्तक्षेप करने का कोई अधिकार नही है तथा दरभंगा पैलेस के मालिकान वाराणसी विकास प्राधिकरण द्वारा स्वीकृत मानचित्र के अनुसार उसका पुर्ननिर्माण तथा जिर्णोद्धार कर सकते है ।

इस निर्णय की प्रमाणित प्रतिलिपि उपरोक्त पत्रों के साथ संलग्न कर आपको भेजी जा चुकी है पर मेरे इन पत्रों का कोई उत्तर आप द्वारा प्राप्त नही हुआ है ।

विदित हो कि दरभंगा पैलेस के जिर्णोद्धार तथा पुर्ननिर्माण का मानचित्र आप द्वारा स्वीकृत है तथा पुनः दिनांक 03.03.2005 को आप द्वारा निरीक्षण कर तथा उस समय तक किये गये सभी कार्यों तथा आंशिक विचलन का शमन कर संशोधित मानचित्र की स्वीकृती आप द्वारा प्रदान की जा चुकी है तथा संशोधित मानचित्र को दिनांक 03.03.2005 से 5 वर्षो के लिए पुनः स्वीकृत किया जा चुका है ।

श्री गुलशन कपुर के सूचनाधिकार के तहत मांगी गयी सूचना के जवाब में आपने लिखा है कि दरभंगा पैलेस का मानचित्र स्वीकृत है और केवल ए.एस.आई. की आपत्ति पर आपने वहां का जिर्णोद्धार तथा पुर्ननिर्माण का कार्य दिनांक 15.04.2005 से स्थगित कर रखा है । यह स्थगन केवल ए.एस.आई. की शिकायत पर किया गया है और किसी अन्य कारणों द्वारा नही ।

चुंकि ए.एस.आई. के सम्बन्ध मे माननीय उच्च न्यायालय ने अपने निर्णय द्वारा स्थिति स्पष्ट कर दी है इसलिए ए.एस.आई. के कारण जिर्णोद्धार तथा पुर्ननिर्माण का

क्रमशः...2

कार्य आपके पत्र दिनांक 15.04.2005 द्वारा रोके जाने का अब कोई औचित्य नहीं है और यह पूर्ण रूप से निष्प्रभावी हो चुका है ।

सहायक अभियन्ता वाराणसी विकास प्राधिकरण द्वारा दिनांक 29.03.2006 को ए.एस.आई. को अनापत्ती के लिये लिखा गया पत्र न्यायालय के निर्णय की अवहेलना तथा अवमानना है ।

चूंकि न्यायालय द्वारा निर्णित उपरोक्त याचिका में प्रतिवादी संख्या 5 उत्तर प्रदेश सरकार जरिए सचिव नगर विकास उत्तर प्रदेश, लखनऊ भी एक प्रतिवादी है इसलिए यह निर्णय उत्तर प्रदेश सरकार पर भी बाध्यकारी है ।

अतः आपसे निवेदन है कि उच्च न्यायालय के निर्णय दिनांक 18.01.2006 ई० का अवलोकन करते हुए आप उसका अनुपालन तत्काल सुनिश्चित करें ताकि दरभंगा पैलेस का जिर्णोद्धार आदि का कार्य पूरा कराया जा सके । आपसे यह भी निवेदन है कि इस पत्र का उत्तर देने की कृपा करें ।

दिनांक : 05.05.2006

प्रतिलिपि सूचनार्थ :-

अध्यक्ष वाराणसी विकास प्राधिकरण।

(अरविन्द कुमार)

एटार्नी

अपूर्व कुमार तथा अन्य
एस 10/252, सुन्दर विला
मकबूल आलम रोड
वाराणसी ।

Encl-33

वाराणसी विकास प्राधिकरण, वाराणसी

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आदेश

सर्वश्री अपूर्व कुमार, विवेक कुमार, [illegible] कुमार शाह निवासी ग्राम आजमी [illegible] संख्या 1151 नीजा शहरखास, भवन संख्या डी0 20/17ए, डी0 20/17बी, डी0 20/17सी, डी0 20/16, नीजा शहरखास, परगना देहात अमानत, तहसील सदर के भवन मानचित्र का परिवर्तन परिवर्द्धन का प्रार्थना दि0 24-4-97 को प्राधिकरण द्वारा [illegible] किया गया। तत्पश्चात शासनादेश संख्या-124 सी0एच0 / 9- [illegible] 3-2000 127 / कम / 99 दि0 31 जुलाई, 2000 के अनुसार गंगा नदी के किनारे 200 मीटर तक [illegible] की गतिविधियों अनुमन्य न किये जाने [illegible] प्रार्थना पत्र दि0 27-2-01 को निष्प्रभावी करते हुए स्थल पर [illegible] की नदी प्रवाह का निरीक्षण [illegible] सम्बन्ध में [illegible] त किया गया।

पुनः संशोधित शासनादेश [illegible] 8-840 / 9-आ-3 2001-127कम / 99 दिनांक 11 अप्रैल 2001 के प्राप्त होने पर शासनादेश में निहित प्रतिबन्धों / शिथिलीकरण के अनुक्रम में सम्बन्धित मानचित्र को पुनः दिनांक 26-5-2001 को प्रभावी कर दिया गया।

[illegible] द्वारा निरीक्षण करते समय उल्लिखित विचलन जिसे जाने की शिकायत प्राप्त हुयी जिसमें ग्राम में परिक्षेत्रापरान्त उ0प्र0 नगर योजना एवं विकास अधिनियम, 1973 की धारा 13 के अन्तर्गत कार्यवाही की गयी, जिसपर भवनस्वामी द्वारा माननीय उच्च न्यायालय में रिट याचिका संख्या-43661/2001 योजित की गयी। उक्त रिट याचिका में माननीय उच्च न्यायालय द्वारा पारित आदेश दि0 13-5-2002 एवं इनके द्वारा दी गयी व्यवस्था के अनुपालन दिनांक 8-1-2003 के आलोक में उक्त पूर्व स्वीकृत मानचित्र को [illegible] 25-4-20 तक बढ़ा दी गयी। पुनश्चः दि0 की शिकायत दिनांक 21-6-20 [illegible] पुनः धारा 13 विरूद्ध उ0प्र0 नगर योजना एवं [illegible] नगर अधिनियम, 1973 के अन्तर्गत नोटिस जारी की गयी तथा निर्माण स्थल को सील कर दिया गया। जिसपर अधिवक्ता द्वारा दि0 20 जुलाई, 2004 को इनके की स्थलीय निरीक्षण आख्या एवं इनके द्वारा अनुमोदित मानचित्र की प्रतियों के साथ-साथ भारतीय पुरातत्व विभाग की अनापत्ति दि0 20 जुलाई 2004 को संलग्न करते हुए निर्माण की अनुज्ञा [illegible] भवन / प्रस्तावित मानचित्र प्रस्तुत किये के लिए [illegible] खोले जाने का अनुरोध किया गया। जिसपर पक्ष द्वारा स्थल पर [illegible] गया

पक्ष द्वारा दि० 24-1-2005 को शमन/प्रस्तावित मानचित्र प्रस्तुत किया गया। आवेदक द्वारा प्रस्तुत शमन मानचित्र को इंजीनियर के परामर्श अनुरोधित मानचित्र एवं वाराणसी पुरातत्व विभाग की अभ्यर्थित के आलोक में दि० 3 -05 को सशर्त शर्तों के साथ मानचित्र स्वीकृत कर दिया गया।

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4- पुरातत्व विभाग की शिकायत पर पक्ष को पुनः उ०प्र० नगर योजना एवं विकास अधिनियम की संगत धाराओं के अन्तर्गत दि० 1-4-2005 को निर्माण तोड़ कार्य बन्द करने का नोटिस पुरातत्व विभाग की आपत्ति को इंगित करते हुए दी गयी। जिससे क्षुब्ध होकर पक्ष द्वारा मा० उच्च न्यायालय में रिट याचिका संख्या 71449/2005 श्री अमृत कुमार एवं अन्य द्वारा भारतीय पुरातत्व विभाग के अधिकारियों व सचिव नगर विकास उ०प्र० शासन को पक्षकार बनाते हुए योजित की गयी। जिसपर मा० उच्च न्यायालय द्वारा दि० 18-1-2006 के आदेश पारित करते हुए निर्देश दिया गया है "Therefore, in totality, we are of the view that the order of demolition or for any purpose interfering with the cause of construction by such authority, should be quashed and is accordingly quashed. As a result whereof, the petitioners will be entitled to remodel or restructure the house with the appropriate sanction of Varanasi Development Authority and/or Municipal Corporation whosoever is competent to do so, if not already obtained."

मा० उच्च न्यायालय के आदेश की प्रति संलग्न करते हुए दि० 30-1-2006 को सूचना दी वाराणसी विकास प्राधिकरण का निर्माण स्थल पर काम प्रारम्भ करने के सम्बन्ध में अवगत कराया गया और यह अनुरोध किया गया कि यदि प्राधिकरण चाहे तो निर्माण स्थल की जाँच करलें। इस सन्दर्भ में मा० उच्च न्यायालय के आदेश पर भारतीय पुरातत्व विभाग द्वारा दि० 27 मई, 2008 को यह सूचित किया गया कि उनके द्वारा महा निदेशक भारतीय पुरातत्व सर्वेक्षण, नई दिल्ली को मामले का सम्पूर्ण विवरण के साथ माननीय उच्च न्यायालय में मुकदमा दायर करने के लिए प्रस्ताव भेजा गया है परन्तु मा०

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सर्वोच्च न्याय से कोई भी स्थगन आदेश अभी तक भारतीय पुरातत्व विभाग द्वारा प्रा नहीं किया सका है।

इस सम्बन्ध में उपाध्यक्ष द्वारा दि0 4-6-08 को दर्शनार्थ पेशकश के प्रतिनिधि को उपस्थिति प्राधिकरण के सहायक अभियन्ता, [illegible] कार्यालय के साथ कार्यस्थल का निरीक्षण किया गया। मुख्यागी द्वारा पुराना छप्पर [illegible] खम्भों का स्थानीय पत्थरों से [illegible] बिलेस कर निर्माण कार्य कराया गया है। गया। [illegible] का संशोधित प्राक्कलन मानचित्र के अनुसार किया जा रहा था जो रुका हुआ पाया गया। भारतीय पुरातत्व विभाग के [illegible] किसी प्रकार आपत्ति का समावेश नहीं किया गया। अतः माननीय उच्च न्यायालय के आदेश दिनांक 18-1-2008 के अनुपालन में प्राधिकरण द्वारा जारी आदेश संख्या-14 /5 दि0 16-4-08 को एतद् द्वारा निरस्त किया जाता है। पक्ष प्राधिकरण द्वारा स्वीकृत मानचित्र के अनुसार निर्माण करा सकेंगे। आदेश की एक प्रति मुख्यागी को भी उपलब्ध करा दी जाय। क्षेत्रीय सहायक अभियन्ता निर्माण पूर्ण होने तक आवश्यक पर्यवेक्षण करते रहेंगे।

07.7.08
(आर0पी0गोस्वा0)
उपाध्यक्ष।

-3-

पत्रांक 38/12.000E/प्र.प्रा.0/..... दिनांक 3.8.2012

(34)

Encl - 34

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परिशिष्ट-6

((प्रपत्र-'ब') पृष्ठ 4/4)

भाग-ब

विकास प्राधिकरण की अभ्युक्ति एवं पूर्णता प्रमाण-पत्र :

(आवेदन पत्र के भाग 'अ', 'ब' एवं 'स' की फोटो कापी पर जारी किया जाए)

दुर्गाकुण्ड वार्ड/मुहल्ला/मोहल्ला/सेक्टर में स्थित भूखण्ड संख्या 11513, आवास सं. D 20/16, D 21/17, A,B,C पर निर्मित भवन के सम्बन्ध में दिए गए उपरोक्त प्रमाण पत्र का परीक्षण श्री - - - - (पदनाम) - - - - विकास प्राधिकरण द्वारा कर लिया गया है एवं निर्माण कार्य प्राधिकरण द्वारा दिनांक 03-03-2005 को स्वीकृत मानचित्र के अनुरूप सही पाया गया है। अतः उत्तर प्रदेश नगर योजना और विकास अधिनियम,1973 की धारा-15 उप (2) के अनुसार पूर्णता प्रमाण पत्र जारी किया जाता है।

श्री आराम देवपुत्र पोखर आवास स्वीकृति अनुरूपपुत्र
विनोद कुमार, अरुण कुमार, मनीष कुमार आवास-11513
आवास सं० D20/16, D20/17 A,B,C दुर्गाकुण्ड, वाराणसी

हस्ताक्षर 3.8.2012
पदनाम सहायक
वाराणसी विकास प्राधिकरण
कार्यालय का नाम वाराणसी

दिनांक .....

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Locus Standi of petitioner to file present Public Interest Litigation (as alleged)

24.5.1995

Respondents 6 to 8 purchased Darbhanga Palace bearig Municipal No. D-20/17A, 17B, 17C and 16, Munshi Ghat, Varanasi.

2-2-1996

Petitioners purchased House No. D-20/21, Munshi Ghat, Varanasi which is just behind Darbhanga Palace, after a lane.

In the aforesaid house D-20/21, Petitioners carry on Guest House, Restaurant, Hukka Parlour where large number of tourists used to come, without there being registration of said building under **SARAIS Act, ..., which is mandatory.**

Darbhanga Palace at the time of purchase was in ruinous and dilapidated condition due to neglect, want of repair and if the same was not renovated, conserved and restored by respondent nos. 6 to 8, it would have fallen down long back.

In that event, tourists coming over House No. D-20/21 of petitioner would have full view of river Ganges.

Entire object of petitioners is to see that entire building may fell down and there would be no obstruction between building of petitioners and river Ganges.

Present petition is pending for about 10 years and bulky record of present case shows that petitioner No.2 made all efforts to investigate and obtain all the records in respect of only one building Darbhanga Palace.

From records, it also transpires that the petitioners have not brought on record any document of any building in this petition and from that it is apparent that it is not a Public Interest Litigation but a **Private Interest Litigation**, aimed at only one building Darbhanga Palace inasmuch as relief No. (ii) of the writ petition also speaks to that effect which is for demolition of Darbhanga Palace which is quoted below:-

> ***"(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to forthwith demolish the construction of 4 storied 5 Star hotel being carried out by the respondent nos. 6 to 8 in Darbhanga Palace."***

The first and foremost requirement of Public Interest Litigation by a person is that he/she has no personal or private interest in the matter, public cause is to be espoused and result of the litigation will not lead to any undue gain to him/her or any one associated with him/her, or any undue loss to any person, body of persons.

Chapter XXII Rule 1(3-A) of Allahabad High Court Rules, 1952 provides for **declaration in the form of affidavit to be sworn by persons seeking** to file a Public Interest Litigation certain requisites, to satisfy the requirement of other Rules of Chapter which is detailed below for ready reference:-

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1.....

(2).....

(3).....

(3-A) ***In addition to satisfying the requirements of the other rules in this Chapter, the petitioner seeking to file a Public Interest Litigation, should precisely and specifically state, in the affidavit to be sworn by him giving his credentials, the public cause he is seeking to espouse; that he has no personal or private interest in the matter; that there is no authoritative pronouncement by the Supreme Court or High Court on the question raised; and that the result of the Litigation will not lead to any undue gain to himself or anyone associated with him, or any undue loss to any person, body of persons or the State."***

In the present case petitioners miserably failed to satisfy aforesaid requirements of law which time and again reiterated and approved by Hon'ble Court and Hon'ble Supreme Court.

Present petition is silent with regard to satisfaction of aforesaid requirement of law in filing a Public Interest Litigation.

The answering respondents have learnt that petitioners' society had been paid huge amount of money by the Varanasi Development Authority, Varanasi for seeking opinion to give a proposal for inclusion of Varancy City as a Heritage City in World Heritage List of UNESCO. After the work for which petitioners were paid, was over, the Varanasi Development Authority made advertisement to invite tenders and had not given work to the petitioner's society for which society as well as Secretary i.e. petitioner no.2 had grudge against the Varanasi Development Authority and it is petitioner's personal grudge against the Varanasi Development Authority also to file Public Interest Litigation (PIL).

The deponent brings on record contents of paras 4, 7, 8 and 9 of the counter affidavit alongwith annexures filed on behalf of respondent nos. 3 and 4 dated 24-5-2006 to show that she has personal and/or private interest in the matter and to derive undue gain through present petition which clearly disentitles her from filing or pursuing present Public Interest Litigation:-

> ***"4. That apart from other business and alleged cultural affairs, being undertaken as stated by the petitioners, the said house No. D 20/21 Munshi Ghat is actually used by the petitioner no.2 as a Guest House. The rates of Rooms etc. have also been given by the petitioner no.2 in her booklet, which is also available at her website. It is further made clear that although the petitioner is running guest house in the said premises but has not obtained any license or permission under the Sarai Act from the competent authority i.e. the District Magistrate Varanasi. The Additional District Magistrate Varanasi. The relevant portion of Booklet so circulated by the petitioner no.2 and the copy of letter dated 23-05-2006 are filed herewith and are marked Annexure CA-1 and CA-1A respectively.***
>
> ***7. That it is pertinent to point out that the answering respondents with an intention to include Varanasi City and its Ganges River front Ghat and other monuments of Varanasi City in the list of world Heritage of UNESCO for which in its board's meeting held in 26th December, 2001 decided for preparation of report and dossiers proposing nomination of the river front ghats and old***

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City area of Varanasi to be included in the world Heritage list of UNESCO.

8. *That the petitioner through its alleged Secretary i.e. the petitioner No.2, who was herself interested to undertake the said work entered into an agreement with Varanasi Development Authority Varanasi on 23-01-2002 and was given Rs. Two lacs in advance vide cheque No. 017897 dated 23.01.2002 and Rs. 75,600.00 was paid to the petitioner vide cheque No. 289054 dated 31.10.20052 and Rs. 283169.00 vide cheque No. 289854 dated 05.02.2003. Thus the petitioners were paid in all Rs. 558769.00 in that respect. The petitioners submitted partial project report which was sent to Secretary Ministry of Cultural Affairs Govt. of India New Delhi, but was disapproved and by letter dated 4th April, 2002 informed the Principal Secretary Tourism, Sports and culture State of U.P. to the effect that the project so submitted does not fulfill the conditions of UNESCO in order to bring the river front Ghats and other Monuments, of Varanasi City to be included in the list of heritage City of UNESCO hence he projects so submitted by the petitioners was disapproved and fresh tender was invited, where apart from other aspirants, the petitioner again submitted Tender to prepare conservation Management Plan but as all the tenders were not found in order as per guidelines of UNESCO, hence all the tenders were cancelled. The petitioner, who submitted tender, and as the same was rejected, hence vide her letter dated 22-08-2005 requested the Vice Chairman to refund her demand draft of Rs. 10,000.00 submitted alongwith the tender in 2004. The Photostat copy of letter of Secretary Government of India Ministry of Tourism and Culture dated 04.04.2002 and letter of petitioners dated 22-8-2005 are filed herewith and marked Annexure 2 and 3 respectively.*

9. *That it is further pertinent to point out that when earlier tender was rejected and fresh tender was again invited, and was opened on 31.03.2005. The petitioners, whose earlier plan was disapproved and tender invited in 2004 was also cancelled again filed tender in 2005 against the said bid but when she believed that her tender might not be considered, hence filed the aforesaid writ petition probably to solve her own interest. Thus from the aforesaid facts and circumstances, it is clear that the petitioners have not filed the public interest litigation instead has filed this writ petition in her own interest.*

Not only this in the entire petition, petitioner no.2 has not given his credentials and the public cause which she is seeking to espouse which are necessary ingredients for filing Public Interest Litigation as provided in Chapter XXII Rule 1(3-A) of Allahabad High Court Rules, 1952.

Infact no cause of public has been espoused rather public at large are being harassed by the officers of Varanasi Development Authority, Varanasi as well as District Administration at the instance of petitioner no.2. Infact on account of private grudge of petitioner no.2 with respondent nos. 6 to 8, public at large is being harassed inasmuch as there are several instances of collapsing old buildings for want of repair even resulting in causalities as such present petition at the instance of petitioner no. 2 turns out to be **Public Harassment Litigation.**

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A perusal of writ petition goes to show that petitioner nos. 2 is not at all concerned with various old buildings or structures on the Ghat which have fallen down before and after filing of present petition (before and after 2005) and large number of old buildings are on the verge of falling down. In prayer clause petitioner has chosen only one building of respondent nos. 6 to 8 which is impermissible to maintain a Public Interest Litigation. There are even various new constructions from the foundation within 200 Meters from the river Ganges such as Judges Guest House, Bhuma Math and Sunbeam School etc. but petitioners have not raised any voice against various other new constructions

Orders dated 22-7-2012, 29-10-2012, 3-12-2012, 24-1-2013, 14-3-2013 and 22-4-2013 passed in present petition clearly shows total prohibition of any type of construction and the record of the present petition shows that large number of persons have been compelled to come to the Hon'ble Court seeking permission for repair of their old and dilapidated houses/buildings, which is well within the knowle ge of the petitioner no.2 but she, in willful disobedience of the aforesaid orders passed by Hon'ble Court tried to make major construction in her own house leading to lodging of two First Information Reports first dated 8-6-2013 in Case Crime No. 73 of 2013 under sections 353, 186, 188 and 504 IPC, Police Station Dashashwamedh, Varanasi against petitioner no.2 and her associates which has been challenged by petitioner no.2 and another through Criminal Misc. Writ Petition No. 21459 of 2013 Mrs. Vrinda Dar and another Vs. State of U.P. and others wherein in paragraph no.14 she admitted that materials which was lying in the premises was brought to carry out only miner repair work that had been caused because of the building being old and required regular repairing and maintenance. Para 14 of the aforesaid writ petition is quoted below:-

> **"14. *That infact no new construction was being raised in the premises; the material which was lying in the premises was brought to carry out only minor repairing work that had been caused because of the building being old and requiring regular repair and maintenance.*** *However as the petitioners had an apprehension from the V.D.A. Authorities of the action they have now taken, the petitioners have taken the photographs even prior to start of the repair. The photographs would demonstrate the quantum and the magnitude of the repair to be carries out at the spot. Copies of photograph* filed in Criminal Writ Petition No. 21459 of 2013.

Second F.I.R. is dated 13-10-2013 against petitioner no.2 and her associates in Case Crime No. 127 of 2013 under sections 416, 420, 467, 468, 471 IPC read with section 3 of the SARAIS Act, 1868, Police Station Dashashwamedh, District Varanasi.

A perusal of the F.I.R. shows that petitioner no.2 is indulged in serious irregularities, illegalities and has not come to court with clean hands.

On account of present private interest litigation at the instance of petitioner no.2, contesting respondents suffered huge financial loss, as they invested substantial amount to the tune of more than Rs. 8 Crores as well as hardship for last several years which can not be compensated in any manner whatsoever.

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Facts stated in the FIR are also fortified from newspapers reports.

In view of the facts and circumstances mentioned above it is apparent that petitioners have no locus standii to file and pursue present Public Interest Litigation as such it is liable to be dismissed, as not maintainable, with heavy cost so that justice be done.

Enclosures:-

1. Annexures filed alongwith affidavit of respondent no.3 and 4 dt. 24.5.2006
2. F.I.R. dt. 8.6.2013
3. F.I.R. dt. 13.10.2013
4. Newspaper reports

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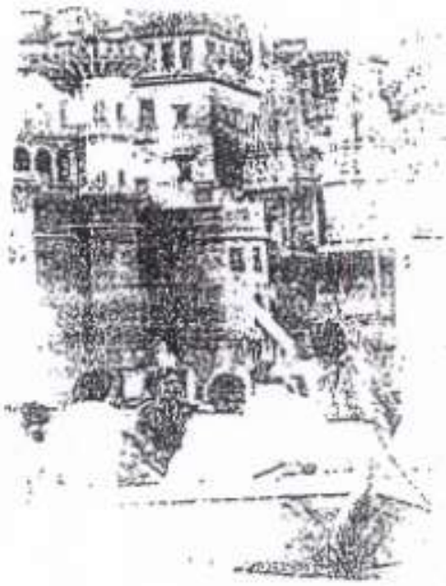
Annexure-CA-1.



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- Hospitality in Varanasi
- Local tours tailored to your interests,
- Introduction to local masters and experts,
- Study seminars, retreats and occasions for dialogue,
- Assistance in selection and application process to classical learning institutes.

(Testo in italiano)

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© Kautilya Society

Ram Bhavan:

the Varanasi Retreat for Members of the Kautilya Society

Ram Bhavan is the headquarters of Kautilya Society in Varanasi.

It is a four-storey house built in a traditional Indian, joint-family style.

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Ram Bhavan

It is situated in the heart of old Varanasi, next to the river Ganges, behind the Darabanga Palace, one of the most beautiful historic monuments along the ghats. (**see a photo of Darabanga Palace from the Ganges**)

The ambience of Ram Bhavan

Good Indian Food; Rates; Getting here

It enjoys a suggestive view of the Ganges from the roof terrace.

After a long journey to reach Banaras, guests at Ram Bhavan immediately feel a sense of relief when entering the inner court of the ground floor.

View from the terace of Ram Bhavan

"It was well worth the 40-hour train ride from Madras," wrote Nancy Hausner from Woodstock, New York.

"Places, people and timing add up to make an experience joyous or not; and there is no doubt in my mind that staying at Ram Bhavan, with its newly painted walls, amazing roof view, entire floor at our disposal, and kindness of everyone concerned made my time in Varanasi as magical as it turned out to be," wrote Ellen from Nepal.

It's like finding a wonderful home in a strange land.

Vrinda:
Secretary of Kautilya Societ; and Manager of Ram Bhavan

The ambience of Ram Bhavan

Good Indian Food; Rates; Getting here

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(20)

The ambience of Ram Bhavan:

the Varanasi Retreat for Members of the Kautilya Society

The atmosphere of Ram Bhavan wants to remain faithful to the simple comforts of an Indian home with a splash of colour. Walls are painted in the colors of the ancient city: a cooling forest green facing the court; peacock blues in the bedrooms; Annapurna rose in the kitchen. Furniture is colonial Teak or cane.

The top three floors have approximately three bedrooms, a sitting area, dining room, kitchen and one-and-a-half bathrooms.
The ground floor has a large sitting area and offices.
The roof terrace has a study room with spectacular views.
Bedrooms are set with a bed, a desk, chair, fan, mosquito net and computer outlet.

Rates

Rooms in high season cost from € 4 to € 10 per day, including half board (€ 1 a day for additional guests sharing the

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same room). In low season rates are approximately 20% lower. Special prices can be obtained by groups renting entire floors. Special prices can be obtained by long term guests.

When renovating Ram Bhavan, the Kautilya Society had to choose between quantity and quality, between creating many guest rooms or preserving an authentic family atmosphere. We chose the latter, which means the few rooms we have cost more than the average guest house in Varanasi, but Ram Bhavan guests appreciate our decision.

While individual rooms are available for students at special rates for long-term stays, the house lends itself very well to be rented by small groups per floor, or by a larger group that wants to have the entire house at its disposition for a retreat or study seminar.

Ram Bhavan is leased to the Kautilya Society, a non-profit organization registered in Uttar Pradesh for the promotion of intercultural dialogue.

By Indian law it is necessary for all residing guests to become members of the Society; annual membership is 6 Euros; life membership is 20 Euros.

What we are offering is

A personalized introduction to Varanasi

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tailored to your specific interests

Dr. Vrinda Dar is the current General Secretary of the Kautilya Society and is acting manager for the next two years. She is fluent in Italian, English, French and Hindi. For those who wish to make a study sojourn in Varanasi, Vrinda communicates via E-mail to advise members on their choice, and then assists them through the application and registration procedures for Banaras Hindu University, The Sanscrit University or for the many other institutes of classical learning, such as music, dance and yoga.

Acting as liason between local personalities, experts and masters and visiting foreign writers, serious journalists and researchers, Vrinda introduces them into the spirit of India so that the true dignity of the culture and its people are comunicated. She also organizes logistical and technical support, interpreters and transport.

Obviously, most people are vacation travellers. We would also like to reach you so your experience of Varanasi is as authentic and enrichening as possible. We are organized to do this through our special hospitality. The Kautilya Society has its headquarters in Ram Bhavan, a house architected in a traditional style, situated along the the banks of the Ganges in the heart of ancient Banaras. Lodging is available for members who wish to enjoy the warmth and protection of our family-style environment, as well as the good and reliable meals of our personally-trained cook.

Otherwise members may either make their own arrangements or seek our advice on upscale or downscale accomodation and make use of our services and day hospitality at Ram Bhavan.

Our services include:

- Tours planned according to areas of in
- Organization of retreats and seminars,

Vrinda Dar
is the current General Secretary of the Kautilya Society and is acting manager of Ram Bhavan for the next two years.

Kautilya Society

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

*****

ANNEXURE NO. CA-1A

IN

COUNTER AFFIDAVIT

IN

CIVIL MISC. WRIT PETITION NO. 31229 OF 2005

(Under Article 226 of the Constitution of India)

PUBLIC INTEREST LITIGATION

DISTRICT : VARANASI

Kautilya Society, D 20/21, Munshi Ghat, Varanasi, through its General Secretary, Mrs. Vrinda Dar and another

..... Petitioners

Versus

State of U.P. and others .... Respondents

>>>>>>>>> CONT.....2

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प्रेषक,

जिलाधिकारी,
वाराणसी ।

सेवा में,

सचिव,
वाराणसी विकास प्राधिकरण,
वाराणसी ।

संख्या 335 / प्रोटोकाल/विविध/2006 दिनांक 23-05-2006

महोदय ,

कृपया अपने पत्र संख्या 56/ वि0प्रा0/ सचिव/2006-07 दिनांक 23-05-2006 का संदर्भ ग्रहण करने का कष्ट करें , जिसके द्वारा कौटिल्य सोसायटी वाराणसी राम भवन आवास संख्या डी0 20/21 नदेसर वाराणसी । गेस्ट हाउस को सराय एक्ट के अन्तर्गत पंजीकरण के सम्बन्ध में अवगत कराने हेतु कहा गया है ।

उक्त के सम्बन्ध में अवगत कराना है कि कौटिल्य सोसायटी वाराणसी राम भवन आवास संख्या डी0 20/21 नदेसर वाराणसी उत्तर प्रदेश सराय अधिनियम के परिक्षेत्र में सम्मिलित नहीं पाया गया है ।

भवदीय ,

अपर जिला मजिस्ट्रेट (प्रोटोकाल/पर्यटन)
वाराणसी ।

संख्या एवं दिनांक तदैव

प्रतिलिपि - जिलाधिकारी, वाराणसी को सूचनार्थ प्रेषित ।

अपर जिला मजिस्ट्रेट (प्रोटोकाल एवं पर्यटन)
वाराणसी ।

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

*****

ANNEXURE NO. CA-2

IN

COUNTER AFFIDAVIT

IN

CIVIL MISC. WRIT PETITION NO. 31229 OF 2005

(Under Article 226 of the Constitution of India)

PUBLIC INTEREST LITIGATION

DISTRICT : VARANASI

Kautilya Society, D 20/21, Munshi Ghat, Varanasi, through its General Secretary, Mrs. Vrinda Dar and another

..... Petitioners

Versus

State of U.P. and others .... Respondents

>>>>>>>>> CONT.....2

Annexure – 2.

नी. गोपालास्वामी
N. Gopalaswami
Tel. : 3385995, 3381040
Fax : 3384093

सचिव
भारत सरकार
पर्यटन और संस्कृति मंत्रालय
संस्कृति विभाग
नई दिल्ली -११० ००१
SECRETARY
GOVERNMENT OF INDIA
MINISTRY OF TOURISM & CULTURE
DEPARTMENT OF CULTURE
NEW DELHI - 110001

2293/ASTCS/2002

D.O.2-2/2002/Spl.Cell

4 April 2002.

Dear Shri Puri,

Kindly refer to your letter No.5403/4-2002 dated 14.2.2002 regarding granting the status of World Heritage City to Varanasi in the UNESCO World Heritage List.

2.0 In this regard I would like to inform you that the guidelines of the World Heritage Committee specifies that Monuments, Groups of buildings, Sites as defined could be considered only if they are of "outstanding universal value" for the purpose of the World Heritage Convention and meet one or more of the criteria as follows and the test of "authenticity".

(a)

(i) represent a masterpiece of human creative genius; or

(ii) exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design; or

(iii) bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared; or

(iv) be an outstanding example of a type of building or architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history; or

(v) be an outstanding example of a traditional human settlement or land-use which is representative of a culture (or cultures), especially when it has become vulnerable under the impact of irreversible change; or

(vi) be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance (the Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances and in conjunction with other criteria cultural or natural);

contd., pg.2

(27) 106

and

(b)

(i) meet the test of authenticity in design, material, workmanship or setting and in the case of cultural landscapes their distinctive character and components (the Committee stressed that reconstruction is only acceptable if it is carried out on the basis of complete and detailed documentation on the original and to no extent on conjecture).

(ii) have adequate legal and/or contractual and/or traditional protection and management mechanisms to ensure the conservation of the nominated cultural properties or cultural landscapes. The existence of protective legislation at the national, provincial or municipal level and/or a well-established contractual or traditional protection as well as of adequate management and/or planning control mechanisms is therefore essential. Assurances of the effective implementation of these laws and/or contractual and/or traditional protection as well as of these management mechanisms are also expected. Furthermore, in order to preserve the integrity of cultural sites, particularly those open to large numbers of visitors, the State Party concerned should be able to provide evidence of suitable administrative arrangements to cover the management of the property, its conservation and its accessibility to the public.

3.0 With respect of groups of urban buildings, the World Heritage Committee has adopted the following additional Guidelines concerning their eligibility for inclusion in the World Heritage List namely:-

3.1 towns which are no longer inhabited but which provide unchanged archaeological evidence of the past; these generally satisfy the criterion of authenticity and their state of conservation can be relatively easily controlled;

3.2 historic towns which are still inhabited and which, by their very nature, have developed and will continue to develop under the influence of socio-economic and cultural change, a situation that renders the assessment of their authenticity more difficult and any conservation policy more problematical;

3.3 new towns of the twentieth century which paradoxically have something in common with both the aforementioned categories: while their original urban organization is clearly recognizable and their authenticity is undeniable, their future is unclear because their development is largely uncontrollable.

4.0 The World Heritage Committee has further clarified in their guidelines that the cases of inhabited historic towns the difficulties of evaluation of nominations are numerous largely owing to the fragility of their urban fabric, which has in many cases been seriously disrupted since the advent of the industrial era and runaway speed with which they surroundings has been urbanized.

Contd...pg.3

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5.0 They have further distinguished four categories of such historic towns:

(i) Towns which are typical of a specific period or culture, which have been almost wholly preserved and which have remained largely unaffected by subsequent developments. Here the property to be listed is the entire town together with its surroundings, which must also be protected;

(ii) Towns that have evolved along characteristic lines and have preserved, sometimes in the midst of exceptional natural surroundings, spatial arrangements and structures that are typical of the successive stages in their history. Here the clearly defined historic part takes precedence over the contemporary environment;

(iii) "Historic centers" that cover exactly the same area as ancient towns and are now enclosed within modern cities. Here it is necessary to determine the precise limits of the property in its widest historical dimensions and to make appropriate provision for its immediate surroundings;

(iv) Sectors, areas or isolated units, which even in the residual state in which they have survived, provide coherent evidance of the character of a historic town which has disappeared. In such cases surviving areas and buildings should bear sufficient testamony to the former whole.

6.0 The Guidelines clarify that Historic centers and historic areas should be listed only where they contain a large number of ancient buildings of monumental importance which provide a direct indication of the characteristic features of a town of exceptional interest. Nominations of several isolated and unrelated buildings which allegedly represent, in themselves, a town whose urban fabric has ceased to be discernible, should not be encouraged.

7.0 The World Heritage Committee has also clarified that under present conditions, preference should be given to the inclusion in the World Heritage List of small or medium - sized urban areas which are in a position to manage any potential growth, rather than the great metropolises, on which sufficiently complete information and documentation cannot readily be provided that would serve as a satisfactory basis for their inclusion in their entirety. Also they have specified that in view of the effects which the entry of a town in the World Heritage List could have on its future, such entries should be exceptional. Inclusion in the List implies that legislative and administrative measures have already been taken to ensure the protection of the group of buildings and its environment. Informed awareness on the part of the population concerned, without whose active participation any conservation scheme would be impractical, is also essential.

8.0 Thus the Guidelines of the Committee, which has been spelt out in the note above, prescribe very specific conditions for nominations of urban areas and in fact discourage big cities. In fact strictly speaking there is no concept of World Heritage city within the Guidelines of the World Heritage Convention.

Contd...pg.4

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9.0 It may be mentioned that cities such as Varanasi do not fall into the so far identified under and less represented categories in the World Heritage List.

10.0 Further more the objective of placing of cultural properties in the World Heritage list is to ensure its preservation & conservation. The World Heritage Guidelines demand implementation of a strict regime of protection and conservation measures for all sites, which are declared as World Heritage. In fact such sites demand identification of an adequate buffer zone also around the core area of the site which has restrictions placed on its use, besides the site, India as a state party has already had the experience of Hampi a World Heritage site being declared a site in danger and brought on the endangered list because of construction of two bridges in the protected zone. Declaration of a entire city as World Heritage would result in the enumerable problems for its protection and conservation especially in developing country like India, where population growth and the pressures of development including provision of basic amenities is the foremost priority.

11.0 In addition it may be mentioned that Varanasi has not yet been identified on the tentative list of nomination of cultural properties. As per the Operational Guidelines only properties recorded in the tentative list can be considered for such nomination.

12.0 From the above it would appear that it would not be an easy proposition to nominate the entire city of Varanasi as a candidate for the World Heritage List. Alternatively the Government of UP could consider amending the local municipal acts to provide for declaration of a city or a zone in a city as a heritage city and prescribe stringent legislative measures for the preservation and conservation of the designated area and at an opportune time in the future propose for taking up the case for World Heritage Committee's consideration specially after it is ensured that conditions in Para 3 can be effectively complied with.

With regards,

Yours sincerely,

(N.Gopalaswami)

Shri P.L. Punia
Principal Secretary
(Tourism, Sports & Culture)
Government of UP
Secretariat,
Lucknow-226001

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

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ANNEXURE NO. CA- 3

IN

COUNTER AFFIDAVIT

IN

CIVIL MISC. WRIT PETITION NO. 31229 OF 2005

(Under Article 226 of the Constitution of India)

PUBLIC INTEREST LITIGATION

DISTRICT : VARANASI

Kautilya Society, D 20/21, Munshi Ghat, Varanasi, through its General Secretary, Mrs. Vrinda Dar and another

..... Petitioners

Versus

State of U.P. and others .... Respondents

>>>>>>>>> CONT.....2

(5)

Annexure-3.

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Kautilya Society *for intercultural dialogue*

D 20/21 Munshi Ghat Varanasi 221 001 INDIA; tel: (+91) 0542- 245.21.79

22.08.2005

To,
Mr Himanshu Kumar,
Vice Chairman, VDA,
Varanasi

Subject: refund of demand draft submitted to VDA for a bid in response to the tender floated in 2004

Dear Sir,
This is requesting the refund of Rs. 10,000/- paid to VDA as bid money for the tender floated by it in 2004 for the preparation of a conservation and management plan within the purview of the proposed enlisting of the riverfront ghat area of Varanasi in the World Heritage List. The tender was subsequently cancelled.

Enclosed is the photocopy of the demand draft of Rs. 10,000/- (ten thousand rupees only) dated 4 February 2004, submitted to VDA.

Thanking you,

Yours sincerely,

Vrinda Dar

Vrinda Dar,
General Secretary

(11)

केवल नकल की फीस के लिए

आवश्यक स्टाम्प सहित प्रार्थना पत्र देने की तारीख Date of which application is made for copy accompanied by the requisite stamps	नोटिस बोर्ड पर नकल तैयार होने की सूचना की तारीख Date of posting notice on notice board	नकल वापिस दिए जाने की तारीख Date of delivery of copy	नकल वापिस देने वाले अधिकारी का हस्ताक्षर Signature of Official delivering copy
21.10.13	21.10.13	21.10.13	21.10.13

21/10/13

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मु० अ० संख्या 73/13 धारा 353/186/188/504 थाना दशरथगंज पाणाशी

प्रथम सूचना रिपोर्ट

जिला पाणाशी

वर्ष 2013

थाना दशरथगंज

पंजीकरण संख्या 0097604

दिनांक व समय 8-6-13 लगभग 1905

दिनांक व समय, जबकि रिपोर्ट की गई	घटनास्थल, दिशा और पुलिस स्टेशन से दूरी	पुलिस स्टेशन से भेजे जाने का दिन
8-6-13 17.05	मुखबीर धार० अ०प० सं० 221/3 ग्राम सरायमल 1 कि० मी०	जानपाली डाक

(1) अपराध की सूचना देने वाले का नाम और पता

(2) थाना से दिशा और दूरी

(3) अपराध किए जाने की तारीख और समय

(4) साजो-सामान का विवरण, जो चुराया गया हो

(5) सूचना देने वाले के हस्ताक्षर

(6) कार्यवाही का संक्षिप्त विवरण

1. थाना दशरथगंज पर मुखबीर खास द्वारा सूचना दी गई कि ग्राम सरायमल में अवैध शराब की भट्टी चल रही है। सूचना पर मौके पर जाकर छापा मारा जाए।

2. थाना से उत्तर दिशा में लगभग 10 किमी की दूरी पर ग्राम सरायमल स्थित है।

3. दिनांक 8-6-13 को समय लगभग 1700 बजे।

4. मौके से 50 लीटर लहन, 2 भट्टी, 1 ड्रम, 10 प्लास्टिक के डिब्बे बरामद हुए।

5. मुखबीर खास द्वारा सूचना दी गई।

6. धारा 353/186/188/504 भादवि के तहत मुकदमा दर्ज किया गया।

हस्ताक्षर [illegible]

नाम [illegible]

पद [illegible]

8-6-013

थाना-दशरथगंज जनपद-पाणाशी

प्रथम सूचना पृष्ठ भाग में लिखी जायगी।

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वेश में प्रभारी निरीक्षक थाना दशाश्वमेध वाराणसी भारी पुलिस बल एवं अन्य हस्ताक्षरी वाराणसी विकास प्राधिकरण के आई.डी. कर्मचारी उपस्थित थे। आज दिनांक 8.6.13 को समय लगभग 2.00 बजे प्राधिकरण के कर्मचारियों द्वारा क्रमशः वेदव्यास, एक भवन संख्या डी.2/31, अस्सी घाट वाराणसी को अपने स्वामित्व की बन्दोबस्त हुए भूमि गाटा संख्या (पाँचवी कालोनी) पर तोड़ फोड़ चेन, गार्ड एवं पर्याप्त फोर्स के द्वारा नई स्थिति (कब्जा) दिलाने का प्रयास किया जा रहा है। इस सूचना पर स्थल निरीक्षण पर पहुँचे तो प्रस्तुत स्थल पर अतिलघु पाइप एवं सिमेन्ट का टपका, लिंटर, पाया गया एवं पक्की सीमेंट पाइप एवं काफी मजदूर एवं दैनिक श्रमिक भी कार्य करते मिले। मौके पर अपने स्वामित्व के कागजात पत्र दैनिक श्रमिक गोपाल को। उनसे उक्त भवन को जो दिए निर्माण की अनुमति मांगी गयी तो उन्हों ने न तो अनुमति पत्र दिखाया और न ही कुछ बोलने के लिए तैयार हो रहे हैं। भवन निरीक्षक एवं सहायक श्रेणी कर्मचारियों की सहायता से कार्य रोकवाते समय वह समय करने पर उतारू है। वह तुरंत ही उपरोक्त में कार्य रुके करने की योजना बनाये है। अतः आप से अनुरोध है कि मा० उच्च न्यायालय के निर्देश से अनुपालन में संलग्न पत्र 200 मीटर के परिधि क्षेत्र में और अनुमति प्राप्त हुए निर्माण को रोकते हुए तुरंत कार्य में पाया जाने के आरोप में भवन स्वामी एवं उनके प्रति निर्दिष्ट श्री देवाशीष के विरुद्ध थाना अपराध संख्या D.2/31 सुधीर वाराणसी के विरुद्ध तुरंत कार्य में पाया जाने पर मा० उच्च न्यायालय प्रार्थनापत्र प्रस्तुत तथा शासन देश के विरुद्ध पारित अनुमति आदेश करते तथा रोकने पर अपराधियों एवं अन्य चोरों के विरुद्ध कार्यवाही करने के आदेश में मेरे पर्याप्त फोर्स को ले कर मौके पर 60 अनुमोदित भवन निरीक्षक 60 सेक्टर / डिप्टी अपर आयुक्त 60 आयुक्त / सहायक आयुक्त 60 अन्य पुलिस सेवा सहित कार्यवाही पर / पर प्राधिकरण / दिनांक 8-6-13

मौके से फोटो प्रस्तुत किया हुआ है एवं मौके का नक्शा पर यथास्थान अंकित किया गया

8/6/13
थाना प्रभारी दशाश्वमेध
वाराणसी

सत्य प्रतिलिपि
8.6.13

सिलाई वाली मशीन
4 नं 370

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सेवा में प्रभारी निरीक्षक थाना दशाश्वमेध वाणसी महोदय हम अधोहस्ताक्षरी वाराणसी विकास पाधिकरण के अधिकारी एवं कर्मचारी है आज दिनांक 8–6–13 को सतय अपरान्ह 2.0 बजे प्राधिकरण के कमचारियों ने भ्रमण में देखा कि भवन सं0 डी0 20ज्ञ/21 मुन्शीघाट वाराणसी की भवन स्वामिनी – विन्दादरा चतुर्थ तल प (पाँचवी मंजिल) पर तोड़फोड़ कर गाटर एवं पटिया के द्वारा नई स्लैप (छत) डालने का पयास किया जा रहा है। हम लोग उक्त सूचना पर स्थल निरीक्षण पर पहुँचे तो प्रश्नगत स्थल के भूतल पर बालू एवं सिमेण्ट का स्टाक मिला तथा गाटर.एवं पटिया सिमेण्ट बालू एवं काफी मजदूर एवं देवाशीष नाम के कर्मचारी मिले। मौके पर भवन स्वामिनी के कर्ताधर्ता श्री देवाशीष मौजूद थे। उनसे उक्त कराये जा रहे निर्माण की अनुमति माँगा गया तो उन्होंने । ही अनुमति पत्र दिखाया और ना ही कार्य रोकने के लिए तैयार हो रहे हैं। भवन निरीक्षक एवं चतुर्थ श्रेणी कर्मचारियों की सहायता से कार्य रोकवाते समय यह झगड़ा करने पर उतारूँ है। वह छुट्टी की अवधि में कार्य पूर्ण करने की योजना बनाए हैं। अतः आप से अनुरोध है कि मा0 उच्च न्यायालय के निर्देश के अनुपालन में गंगानदी से 200 मीटर में प्रतिबन्धित क्षेत्र में वगैर अनुमति प्रारम्भ हुए नवनिर्माण को रोकते हुए सरकारी कार्य में बाधा डालने के आरोप में भवन स्वामिनी एवं उनके प्रतिनिधि श्री देवाशीष अज्ञात निवासी भवन संख्या डी 20/21 मुन्शीघाट वाराणसी के विरूद्ध सरकी कार्य में बाधा डालने मा0 उच्च न्यायालय प्राधिकरण___तथा शासनादेशों के विपरीत वगैर अनुमति कार्य करने तथा रोकने पर अधिकारियों एवं कर्मचारियों के विरूद्ध दुर्व्यव्यहार करने के आरोप में वैधानिक कार्यवाही करने की कृपा करें। ह0 मरीकमल्ल भवन निरीक्षक ह0 के0डी0 सिंह अपरअभियन्ता ह0 भार0__ सिंह सहायक अभियन्ता ह0 सतीश चन्द्र मिश्रा संयुक्त सचिव वा0 वि0 प्राधिकरण । दिनांक 8–6–13

नोट– मैं का0कृ0 प्रमाणित करता हूँ कि तहरीर व _____ पर अक्षरशः अंकित किया गया।

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थाना दशाश्वमेध, वाराणसी।

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3- Kathleen (Secretary)
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विवेचक – एस.एस.आई श्री वेंकटेश तिवारी (वाद विवेचना).

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SUNDAY TIMES OF INDIA, VARANASI
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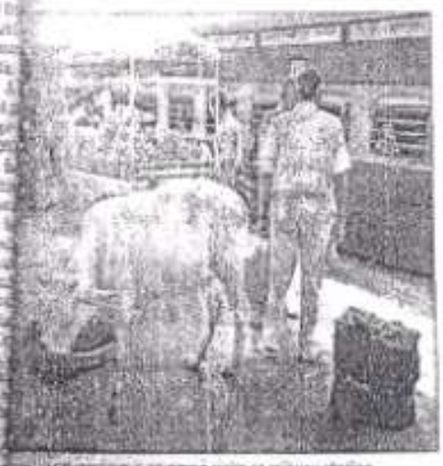
ut bother the city, we review the ich seems to be in total disarray



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SUNDAY अमर उजाला
वाराणसी रविवार 9 जून 2013

को पिटता देख पूनम ने शरीर पर मिट्टी का तेल छिड़ककर आग

पुत्र विजेंद्र का तहरीर पर मुकदमा दर्ज किया।

गिरफ्तारी की मांग की है।

वृंदाधर के मकान में अवैध निर्माण सील

मुंशीघाट पर गंगा किनारे बनी है तीन मंजिली इमारत

वाराणसी (ब्यूरो)। गंगा से दो सौ मीटर के दायरे में एक भवन में बिना अनुमति के हो रहे निर्माण को वीडीए ने रोका और निर्माणाधीन हिस्से को सील कर दिया। वीडीए की टीम से भवन स्वामी की तकरार भी हुई। सूचना पर दशाश्वमेध थाने की फोर्स पहुंची तब वीडीए के अफसर मकान में दाखिल हो सके। इस मामले में भवन स्वामी समेत तीन लोगों पर विभिन्न धाराओं में मुकदमा दर्ज कराया गया है।

हाईकोर्ट ने गंगा के किनारे 200 मीटर के दायरे में निर्माण कार्य पर रोक लगा रखी है। लेकिन मुंशी घाट पर बनी कौटिल्य सोसाइटी की वृंदाधर का तीन मंजिली इमारत में ऊपर मंजिल तल पर बगैर अनुमति निर्माण कार्य चल रहा था। सूचना पर वीडीए के संयुक्त सचिव सतीश मिश्र कर्मचारियों के साथ मौके पर पहुंचे लेकिन भवन स्वामी ने उन्हें अंदर नहीं घुसने दिया। इसकी सूचना श्री मिश्रा ने वीडीए के उपाध्यक्ष बीके सिंह को दी। उन्होंने घटना से डीएम को अवगत कराया। डीएम के निर्देश पर जब पुलिस पहुंची तब वीडीए टीम भवन में प्रवेश कर सकी। श्री मिश्रा ने बताया कि भवन स्वामी द्वारा बिना अनुमति के निर्माण कराने पर जब टीम ने रोकने का प्रयास किया तो उन्होंने इसका विरोध किया। दशाश्वमेध थाने में भवन स्वामी वृंदाधर और देवाशीष पर कोर्ट की अवमानना करने, सरकारी काम में बाधा पहुंचाने और कर्मचारियों से बदसलूकी करने की धाराओं में मुकदमा दर्ज कराया गया है।

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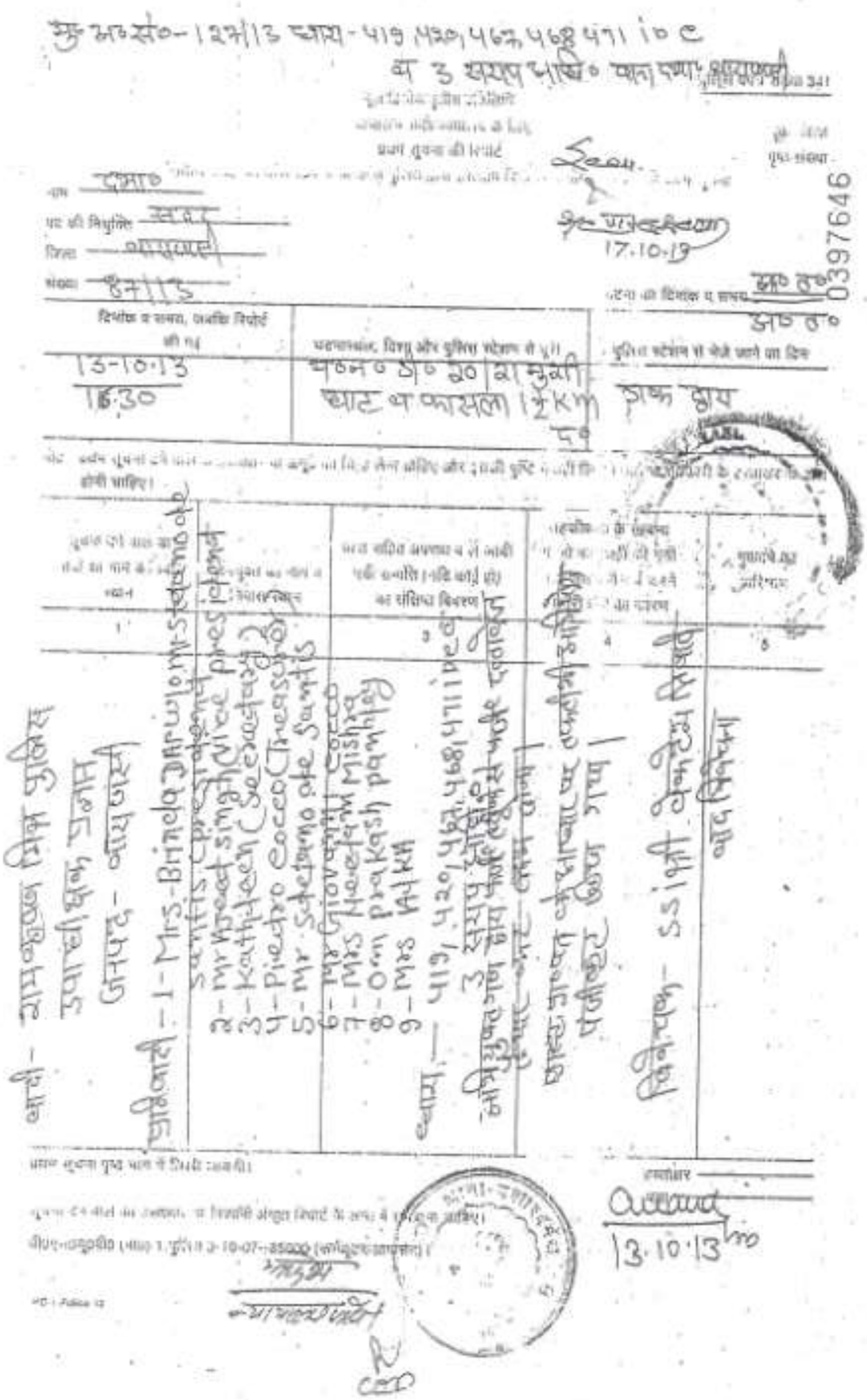

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नकल तहरीर हिन्दी वादी टाईप शुदा

गोपनीय संख्या– एल.आई.यू./विविध/2013 कार्यालय पुलिस उपाधीक्षक प्रजान वाराणसी दिनांक 10.10.2013 सेवा में वरिष्ट पुलिस अधीक्षक वाराणसी कृपया आवेदक श्री पवन शुक्ला के आवेदन पत्र पर अपने पृष्ठांकन एवं जन शिकायत प्रकोष्ठ के कमांक–3 दिनांक 14.09.2013 पर अंकित पत्र का संदर्भ ग्रहण करने की कृपा करें जो कौटिल्य सोसाइटी म0नं0 डी. 20/21मुंशीघाट थाना दशाश्वमेघ वाराणसी की गतिविधियों के संबन्ध में जांच आख्या विषयक है। उपरोक्त संबन्ध में विदित हुआ है कि सहायक निबन्धन फर्म सोसाइटीज एवं चिट्स वाराणसी कार्यालय में कौटिल्य सोसायटी म0नं0 20/21 में भी घाट थाना दशाश्वमेघ वाराणसी का पंजीकरण दिनांक 09.01.1996 को पत्रावली संख्या पी. 20178 प्रमाण पत्र संख्या 788/1997 पर हुआ है। सहायक निबन्धन वाराणसी के पत्र संख्या 22131 आई– .15520/2013–14 वाराणसी दिनांक 01.08.2013 के अनुसार सोसाइटी दिनांक 08.01.2013 तक वैध थी। कौटिल्य सोसायटी में 1.M/s Bonala DAC.W/o M/S Steteno de Santis (president) 3- Kathleenc (Seeletaiy) 4-Pietio Eoeeo (Torsdporo) 5- M/s Stetano of Santis 6- M1 Giovanni Eoeeo 7- M/s Neelam Mishra 8- Om Prakash Pankey 9-M/s Alka कुल 9 व्यक्तियों का नाम गवर्निंग बाडी में शामिल है जिसमें कमांक 3,4,5,6 पर इटली के नागरिकों के नाम उल्लिखित है सेल डीड के अनुसार म0नं0 डी0 20/21मुंशीघाट थाना दशाश्वमेघ वाराणसी को दिनांक 02.02.1996 को श्री मुकुन्द लोहिया पुत्र हनुमान प्रसाद द्वारा श्रीमती विन्दा दार डीवेन्टिस पत्नी स्टीफेनो श्री सेन्टिस निवास पता म0नं0 डी0 20/21 मुंशीघाट की जरिये रजिस्ट्री मु0 50000000 रूपये में विकय किया गया उक्त मकान के कुछ हिस्सों को श्रीमती विन्दादार द्वारा दिनांक 15.03.2001 को Pietto Coeeo 510 GIoVA में भी Coeeo R/OVicaldi, 4D-11197 Rome के नाम मु0 50000000 रूपये में विकय किया गया है जिसका दाखिल खारिज नगर निगम वाराणसी में दिनांक 01.09.2001 को हुआ है जिसपर बतौर मालिक लगातार श्रीमती विन्दादार एवं श्री Pietto Coeeo पुत्र श्री GIoVA anni coeeo विदेशी नागरिक का नाम दर्ज है । उल्लेखनीय है कि सेलडीड में उक्त विदेशी नागरिक को उपरोक्त मकान का कुछ हिस्सा बेचे जाने के संबन्ध में आयकर विभाग से आयकर अधिनियम की धारा 230 ए के अंतर्गत अनुमति प्राप्त किये जाने के आदेश दिनांकित

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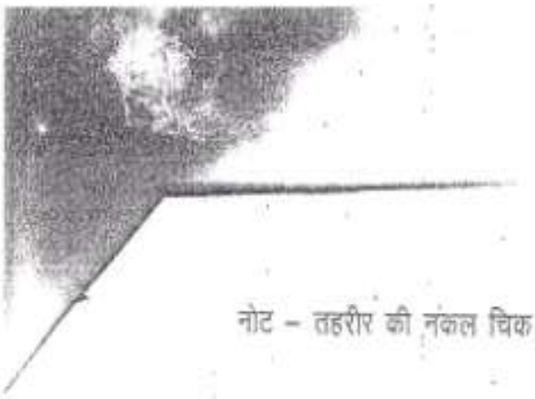
08.09.2001 का उल्लेख किया गया है। भारतीय रिजर्व बैंक आफ इण्डिया के नोटिफिकेशन नंबर FEMA 21/2000-RBDATED 03105/2000 के अनुसार विदेशी नागरिकों द्वारा भारत में स्थायी संपत्ति क्रय किये जाने का प्रावधान नहीं है। (नियम संलग्न है) सोसाइटी पंजीकरण डीड में सोसाइटी का उद्देश; भारतीय सांस्कृतिक एवं धार्मिक विचारों का पाश्चात सभ्यता के साथ अन्तर्सम्बन्ध स्थापित कर उसका विस्तार तथा उक्त कार्य मे सहयोग करने वाली विदेशी शिक्षण संस्थाओं को सहायता करने वाराणसी में रह रहे विदेशी नागरिकों को अवसर प्रदान करने सोसाइटी की लाइब्रेरी बनाने यूरोपियन शिक्षा प्रदान करने व इस हेतु सेमिनार कान्फ्रेंस बिना लाभ/हानि के संचालित करने का उल्लेख किया गया है। कौटिल्य सोसायटी द्वारा अपने उद्देश्यों के विपरीत उक्त भवन को होटल व्यवसाय के रूप में संचालित किया जा रहा है। तथा विदेशी एवं भारतीय यात्रियों को ठहराया जा रहा है। सोसायटी द्वारा रूफ टाप रेस्टोरेंट हुक्का पार्लर संचालित किया जा रहा है। जिसमें विदेशी देशी सैलानी हुक्का का उपयोग करते हैं। अपर जिला मजिस्ट्रेट (प्रोटोकाल पर्यटन) वाराणसी के पत्र संख्या 11/21022/02(83)/2013 एफसीआरए–11 दिनांक 17.07.2013 के अनुसार कौटिल्य सोसायटी का पंजीकरण फारेन कान्स्टीच्यूशन रेगुलेशन एक्ट 2010 के अन्तर्गत नहीं है जबकि सहायक निबंधन वाराणसी के जांच पत्र/आडिट संख्या दिनांक 01.08.2013 में उल्लिखित है कि सोसायटी द्वारा विदेशी व्यक्तियों को सदस्या बनाकर दान प्राप्त किया है एवं एजुकेशन एवं प्रोजक्टम से भी संस्था को आय होती है इस प्रकार से बिना एफ0सी0आर0ए0 के विदेशी धन प्राप्त किया जाना फारेन कान्स्टीच्यूशन रेगुरेशन एक्ट का उलंघन है प्रकरण में प्रापर्टी रजिस्ट्रेशन अधिनियम 1908 ट्रांसफर आफ प्रापर्टी एक्ट 1882 विदेशी मुद्रा नियामक अधिनियम फारेन कान्सटीच्यूशन रूल्स इण्डियन एक्ट 1972 दाखिल खारिज हेतु निर्धारण प्रावधानों व लागू अन्य नियमों के अंतर्गत परीक्षण कराकर सोसायटी बनाने/संचालन में संलिप्त उपरोक्त व्यक्तियों के विरुद्ध कार्यवाही किया जाना आवश्यक है कौटिल्य सोसायटी की उक्त गतिविधियों के दृष्टिगत इसके विरुद्ध किन कानूनों/नियमों के अंतर्गत विधिक कार्यवाही योग्य मामला बनता है को परीक्षण अभियोजन ईकाई द्वारा समीचीन प्रतीत होता है। तदुपरांत उनकी अनुशंसानुसार आवश्यक अग्रिम कार्यवाही की जाय। रामकृष्ण पुलिस उपाधीक्षक प्रज्ञान वाराणसी



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नोट – तहरीर की नकल चिक हाजा पर अक्षरशः अंकित किया गया।

हरिशंकर पाद्य दिनांक 13/10/43

...यटी की आड़ में होटल व्यवसाय और हुक्का पार्लर का संचालन

...जाप के बाद एस.एस.पी. के निर्देश पर मुकदमा दर्ज

जेवर में एक ही रात तीन मंदिरों के ताले टूटे, हजारों की चोरी

कैंडिल जलाकर दि... कुमार को किया ग...

दिवंगत छि... अर्पित करते डॉक्टर भास्कर भास्कर के छात्र/छात्राएं।

कौटिल्य सोसाइटी के नौ लोगों पर मुकदमा दर्ज

संस्था में तीन इटालियन फेसबुक पर शिकायत के बाद हुई कार्रवाई

पंजीयन समाज सेवा का, काम हुक्का पार्लर और होटल चलाने का

रिजर्व बैंक के नियमों और सराय एक्ट का उल्लंघन का आरोप

वाराणसी। दशाश्वमेध पुलिस ने कौटिल्य सोसाइटी के अध्यक्ष समेत नौ लोगों के खिलाफ धोखाधड़ी समेत अन्य धाराओं में रविवार को मुकदमा दर्ज किया। सोसाइटी का उद्देश्य भारतीय सांस्कृतिक एवं मार्मिक विचारों का पाश्चात्य सभ्यता के साथ अंतर संबंध स्थापित करने के लिए था, लेकिन एलआईयू की जांच में आया कि संस्था के भवन का प्रयोग होटल और हुक्का पार्लर के लिए किया जा रहा है। आरोप है कि सोसाइटी का सराय एक्ट में पंजीकरण भी नहीं कराया गया है।

एसएसपी को फेसबुक पर शिकायत मिली कि मुंशीघाट स्थित कौटिल्य संस्था का संचालन अवैध ढंग से हो रहा है। इस मामले में जांच एलआईयू को सौंपी गई। जांच रिपोर्ट में पता चला कि सोसाइटी का पंजीकरण भी जनवरी 1993 में हुआ था। इस संस्था में अध्यक्ष श्रीमती ब्रिंदा धर जन्मी रेटेकियो डी सेन्टिस, उपाध्यक्ष अजित सिंह, सचिव कैथलीन ट्रेजरार पिट्रो कोस्को, स्टेफिनो डी सेन्टिस, निवासी कोस्को, श्रीमती नीलम मिश्रा, ओम प्रकाश चाडेय और श्रीमती अन्ना मारिल ये लोग गवर्निंग बाडी में शामिल हैं। इनमें तीन इटली के नागरिक हैं। पेल डोड के मुताबिक मुंशीघाट के मकान को ब्रिंदा ने पिट्रो कोस्को के नाम से पांच लाख रुपये में रजिस्ट्री कराया था। रिजर्व बैंक के नियमानुसार विदेशी नागरिक भारत में स्थायी संपत्ति क्रय करने का प्रावधान नहीं है। अफसोस है कि संस्था अपने उद्देश्यों के विपरीत भवन को होटल व्यवसाय में संचालित कर रही है। संस्था का कक्ष हुक्का पार्लर के लिए प्रयोग हो रहा है। एडीएम फोरेन्सिक की रिपोर्ट के मुताबिक संस्था का सराय अधिनियम में पंजीकरण भी नहीं है। विदेशी धन को भी फारेन एक्सचेंज रेगुलेशन एक्ट 2010 का उल्लंघन है। इस मामले में एसएसपी के निर्देश पर दशाश्वमेध पुलिस ने धोखाधड़ी और सराय अधिनियम की धारा -3 के तहत नौ लोगों के खिलाफ मुकदमा दर्ज किया है। इस मामले में पुलिस ने अदालत रिपोर्ट जिलाधिकारी को भी दी है। बता दें कि इसके पहले दुर्गाकुंड में एक अमेरिकन महिला द्वारा गलत तथ्य देने के माध्यम से संस्था पंजीकरण के मुकदमे को जांच भेलूपुर पुलिस कर रही है।

भरत मिलाप-बक

नाटी इमली का भरत मिलाप व

वाराणसी। प्रसिद्ध नाटी इमली के भरत मिलाप को शांति पूर्वक संपन्न कराने के लिए जिला पुलिस ने 15 अक्टूबर को कुछ मार्गों पर यातायात प्रतिबंधित किया है। इसके अलावा फोर्स की भी व्यवस्था की गई है।

एसपी सिटी के मुताबिक नाटी इमली मैदान की तरफ 15 अक्टूबर को कोई रिक्शा गाड़ी नहीं जाएगी। जगतगंज, कोतवाली चौराहे के तरफ से नाटी इमली की तरफ भी अवरोध प्रतिबंधित रहेगा। लहुराबीर, रोटरी सिराही से कालीमाता रोड, नाटी इमली की तरफ भी वाहन नहीं जाएंगे। आर्चन जय भारत मोटर्स के मकान के सामने सड़क में बैरीकेड भी लगाए जाएंगे। इस मार्ग से भी नाटइमली जाने को रोका जाने की सलाह दी। बनारस क्लिनिक फैक्ट्री के सामने सड़क से नाटइमली की तरफ, कुआं से नाटी इमली की ओर आवागमन नहीं होगा। संस्कृत विश्वविद्यालय केदार कालेजर के मकान नाटी इमली की तरफ किसी प्रकार के वाहनों को रोक दिया जाएगा।

दशाश्वमेध रोड, डीएवी डीपुरी कालेज गेट, लोहटिया औसानगंज सिराही, लहुराबीर तरफ नाटइमली के रास्ते वाहन नहीं जा सकेंगे। सड़क पर रहने वाले लोग अपने मकान के अंदर रखेंगे। वाहन कब्रगाह के रास्ते से रामकटोरा मैदान में खड़ी करेंगे। दिन में एक बजे समाप्ति तक कोई भी वाहन इलाके में नहीं जाएगा।

वाह साहब ! क्या इंतजाम किया है...

दैनिक जागरण वाराणसी, 14 अक्टूबर 2013

वाराणसी जागरण

घोषित घंटे मिले वेतनजल

वाराणसी : तुर्कमेनी का फॉ 16 अक्टूबर को भारत जाएगा। संस्थाओं ने बैठक कर 24 घंटे वेतनजल की मांग की है।

कानून का मखौल, विदेशियों ने बनाई सोसाइटी

○ कौटिल्य सोसाइटी के संचालक मंडल के खिलाफ मामला दर्ज ○ इटली के चार नागरिक भी आए जद में

वाराणसी : विश्व धरोहर का फायदा उठाते हुए विदेशियों ने न केवल सोसाइटी बनाई बल्कि उसका उपयोग अवैधानिक गतिविधियों के लिए भी करना शुरू कर दिया। एसएसपी के आदेश पर इस मामले कौटिल्य सोसाइटी के संचालकों पंडित के खिलाफ दशाश्वमेध थाने में धोखाधड़ी व जालसाजी की धाराओं के तहत मुकदमा दर्ज कर लिया गया है। इस मामले की विवेचना लंका पुलिस को फेसबुक पेजबाज पर की गई थी।

फेसबुक पर अपलोड फोटो में यह दिखाया गया था कि गुरुधोबाट स्थित मकान नंबर डी 20/21 में कथित विदेशी आर्थिक इकाई [illegible] है। इस मकान का कार्यालय पते के [illegible] भी कराए गए हैं। शिकायत मिलने पर एसएसपी ने सोसाइटी के खिलाफ मुकदमा दर्ज कराने [illegible]

[illegible] यह बात सामने आई कि संचालक मंडल के [illegible] सोसाइटी एवं [illegible] आयोजन में कौटिल्य सोसाइटी मकान नंबर डी 20/21 का पंजीकरण 09.1.1998 को पंजीकरण संख्या सी 2017 (लखनऊ) एक्ट 1860-1997 [illegible] है। जांच में 09.01.2013 [illegible] कौटिल्य सोसाइटी [illegible] मुख्य पदाधिकारी [illegible] (उपाध्यक्ष), [illegible] (ट्रेजरर), [illegible] का [illegible] सोसाइटी के [illegible]

[illegible] रिपोर्ट के आधार पर इस मकान [illegible] संयुक्त रजिस्ट्रार द्वारा खोला [illegible] के साथ लगाए गए [illegible] किया गया था जबकि नियमानुसार किसी विदेशी नागरिक के नाम से कोई सोसाइटी पंजीकृत नहीं हो सकती। इस मकान के कुछ हिस्से को मुंबई हाई ने 15.3.2001 को सोसाइटी के ट्रेजरर पीएसी कोम्बी को चार लाख रुपये में बेच दिया जिसका डीड रजिस्टर्ड तारीख नवंबर में 21.09.2001 को हुआ था। [illegible] तारीख पर मुंबई व कोलकाता का पता दर्ज है।

सेल डीड में विदेशी नागरिक को इस मकान का कुछ हिस्सा बेचे जाने की अनुमति प्रशासन विभाग से प्राप्त किए जाने के आदेश का उल्लेख किया गया है। यहां यह बताना आवश्यक है कि भारतीय रिजर्व बैंक के नोटिफिकेशन नंबर फेमा 21/2000 के अनुसार, विदेशी नागरिक द्वारा भारत में स्थायी संपत्ति क्रय किए जाने का प्रावधान नहीं है।

पंजीकरण डीड की उड़ी धज्जी

एसएसपी ने बताया कि सोसाइटी पंजीकरण डीड में सोसाइटी का उद्देश्य भारतीय सांस्कृतिक व वास्तविक विरासतों का प्रामाणिक संरक्षण के साथ उन्नयनको स्थापित कर संरक्षण विरासत तथा उससे सहयोग देने वाली विदेशी शिक्षण संस्थाओं की सहायता करने, वाराणसी में उक्त से विदेशी नागरिकों को आवास प्रदान करने, सोसाइटी की लाइब्रेरी बनाने, संगोष्ठी आदि जैसे लाभ/लाभ के संचालित करना है। यहीं कौटिल्य सोसाइटी द्वारा उक्त मकान को होटल व्यवसाय के रूप में संचालित किया जा रहा था। विदेशी भी यहां ठहरा करते हैं। सोसाइटी द्वारा एक टॉप रेस्टोरेंट में हुक्का पार्लर संचालित किया जा रहा है जबकि सोसाइटी सोसाइटी अधिनियम 1860 की धारा 20 के पंजीकृत नहीं है। सोसाइटी ने 'फॉरेन कंट्रीब्यूशन रेगुलेशन एक्ट' का भी उल्लंघन किया है।

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रउजाला नारायणी | सोमवार | 16 जनवरी 2018

कौटिल्य के अध्यक्ष समेत नौ पर केस

समाजसेवा के नाम पर कराया पंजीकरण, चल रहा हुक्का पार्लर

र उजाला ब्यूरो

ी। दशाश्वमेध पुलिस ने को कौटिल्य सोसाइटी के समेत नौ लोगों के खिलाफ ड़ी समेत विभिन्न धाराओं में दर्ज किया। सोसाइटी का भारतीय सांस्कृतिक एवं विचारों का आदान-प्रदान करना था, एलआईयू की जांच से पता कि संस्था के भवन का न होटल और हुक्का पार्लर किया जा रहा है। आरोप है साइटी का सराय एक्ट में पंजीकरण भी नहीं कराया गया है।

एसएसपी को फेसबुक पर शिकायत मिली थी कि मुंशीगंज पर कौटिल्य संस्था का अवैध ढंग से संचालन हो रहा है। इस मामले की जांच एलआईयू को सौंपी गई। जांच से पता चला कि सोसाइटी का पंजीकरण दो जनवरी 1998 में हुआ था।

इस संस्था की गवर्निंग बॉडी में अध्यक्ष विंदाधर पत्नी स्टेफि ी डी सेंटिस, उपाध्यक्ष अजित सिंह, सचिव कैथलीन, ट्रेजरर पिट्रो कोस्को, स्टेफिनो डी सेंटिस, निवानी कोस्को, जेलम मित्रा, ओम

फेसबुक पर शिकायत दर्ज कराने के बाद हुई कार्रवाई

रिजर्व बैंक के नियम, सराय एक्ट के उल्लंघन का आरोप

प्रकाश पांडेय और अल्का समेत नौ लोग शामिल हैं। इनमें तीन इटली के नागरिक हैं। सेल डीड के मुताबिक मुंशीगंज के मकान को विंदा ने पिट्रो कोस्को के नाम से पांच लाख रुपये में रजिस्ट्री कराई थी। रिजर्व बैंक के नियमानुसार कोई भी विदेशी नागरिक भारत में स्थायी संपत्ति क्रय नहीं कर सकता।

आरोप है कि संस्था अपने उद्देश्यों के विपरीत भवन को होटल के रूप में संचालित कर रही है। संस्था भवन की छत पर हुक्का पार्लर चल रहा है। एडीएम प्रोटोकाल की रिपोर्ट के मुताबिक संस्था का सराय पड़ाव अधिनियम की धारा-3 के तहत भी पंजीकरण नहीं है। वह फारेन एक्सचेंज रेग्यूलेशन एक्ट का उल्लंघन है। एसएसपी के निर्देश पर दशाश्वमेध पुलिस ने धोखाधड़ी और सराय पड़ाव अधिनियम की धारा -3 के तहत नौ लोगों के खिलाफ मुकदमा दर्ज किया है। पुलिस ने इसकी रिपोर्ट डीएम को भी दे दी है। बता दें कि भेलूपुर पुलिस दुर्गाकुंड में एक अमेरिकन महिला द्वारा गलत नाम और पते के माध्यम से संस्था का पंजीकरण कराने पर मुकदमा दर्ज कर जांच कर रही है।

कौटिल्य सोसाइटी की वृंदा दर ने हाईकोर्ट में जनहित याचिका दायर कर गंगा से दो सौ मीटर के दायरे में हो रहे अवैध निर्माण को रोकने की मांग की है। इसके लिए उन्होंने 1998 में जारी शासनादेश का हवाला दिया है जिसमें गंगा से 200 मीटर के दायरे में किसी भी तरह के निर्माण पर प्रतिबंध लगाया गया है।

...रहा है। पूजन के लिए आई थी। महिला ने

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Government Orders

1. **Government Order dated 16.11.1998**

was issued with an object that river Ganges be not polluted laying down prior to sanctioning of plan/map of colonies developing by the side of river Ganges it is to be ensured that from sewer and drainage of colony river be not polluted and it is only after proper treatment it should be discharged in river and that within 200 Meters from river, no activity be permitted.

2. **Government Order dated 5.2.2000**

It relaxes prohibition of any activity within 200 Meters of river Ganges as provided under Government Order dated 23-9-1998 and 16-11-1998 and prohibition contained in said Government Order of 1998 has been relaxed in respect of religious place, Ashram and Public utility/facility with certain conditions including that drainage shall not be released directly in river Ganges rather provisions shall be made to divert the same in other drains and in case sewage system is not there in the region then permission shall not be accorded in respect of residence/Dharamshala etc. so that wastage may not go in river Ganges.

3. **Government Order dated 31-7-2000**

It further relaxes prohibition of any activity within 200 Meters of river Ganges earlier relaxed by Government Order dated 5-2-2000 to the effect that Math, Ashram of religious importance are part of culture and building and public utility/facilities are part of these buildings of religious feeling, as such total prohibition is not proper but it is also necessary to provide machinery to save Ganges from pollution laying down certain conditions including that applicant has to produce scheme along with map to ensure that no pollution is caused to river drainage shall not be released directly in the river rather provisions shall be made to divert it in other drains, in case sewage system is not there then for residence/Dharamshala etc shall not be permitted so that waste should not go in river.

4. **Government Order dated 11.4.2001**

It made further relaxation with regard to construction within 200 Meters of river Ganges as provided under Government Order dated 16-11-1998 mentioning that a difficulty has arisen as permission is not being given even to repair and renovation/re-construction of old houses situate at the bank of river Ganges which includes magnificent heritage buildings, conservation whereof is also under government's prime agenda in respect thereof specific arrangements are being made as per advice given by Government of India from time to time. It was also brought to the notice of Government that some old Heritage buildings are situated on the bank of river Ganges in Varanasi having religious, cultural myths and in case prohibition continues affecting repairing, looking after, renovation, those buildings relating to culture of Kashi shall vanish, as such it has been decided making it clear that in

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respect of old buildings, religious, cultural and artistic importance of heritage buildings, repairing renovation /conversation of buildings of buildings of general nature be permitted in order to preserve old conservation of heritage buildings .hese permitted in consultation with INTACH but prior to giving permission, it is to be ensured that these buildings are having such sewerage system which shall not be released in the river but through sewer system of the city and that where sewerage system is not there for necessary works prohibition has to be relaxed.

5. **Government Order dated 13-6-2006**

State Government further relaxed and allowed new construction on the bank of river Ganges for construction of Guest House which is completely a new construction well within 200 Meters over Arazi no. 150/1, Mohalla Nagwan, Varanasi, area 13536 Sq. Feet, land use of which at that time (2006) was flood affected area, discriminating to be at large. Aforesaid Government Orders refers to **Government Order dated 1-6-2006** which provides permitting construction of public utilities within 200 Meters from river Ganges.

Object of aforesaid Government orders dated 16.11.1998, 5-2-2000, 31-7-2000, 11.4.2001, 13-6-2006 and 1-6-2006 is to protect river Ganges from pollution and so far as construction, re-construction, renovation and conservation of building etc. is concerned, entire effort is to be made to conserve buildings of historical importance/heritage in order to maintain ambience of Ghat (facing river) and that wastage/sewage of buildings on the bank of Ghats should not pollute river Ganges.

Any interpretation given to aforesaid Government Orders to the effect that there is total prohibition of any type of construction within 200 Meters from river Ganges is not correct which is apparent from Government Order dated 1-6-2006 and 13-6-2006 permitting total new construction which is on the bank of river Ganges. All re-construction, conservation and renovation were in Darbhanga Palace had completed long back inasmuch as aforesaid work, at no stretch of imagination, affects ambience of Ghats and Darbhanga Palace is having its own Sewage Treatment Plant (STP) and no sewage/wastage or effluent will go to river Ganges which is in conformity with the object of the aforesaid Government Orders. Perhaps this is the only STP situate on 84 Ghats of Varanasi.

Petitioners raised voice against only one building Darbhanga Palace where requisite permission by V.D.A. and Archeological Survey of India (ASI) were granted for restoration, renovation, conservation and re-construction of the building being brought to its original shape and character whereas petitioners have no grievance against completely new construction of Guest House situate at the bank of river Ganges what to say about within 200 Meters from river Ganges on the pretext that State Government permitted for the same.

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S. No.	Date	Particular
1.		**Government Order dated 16.11.1998**
2.		**Government Order dated 5.2.2000**
3.		**Government Order dated 31-7-2000**
4.		**Government Order dated 11.4.2001**
5.		**Government Order dated 13-6-2006**

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संख्या-4503 /9-आ-1-1996

श्री अतुल कुमार गुप्ता,
सचिव,
उत्तर प्रदेश शासन ।

1. आवास आयुक्त,
   उ० प्र० आवास एवं विकास परिषद,
   लखनऊ ।
2. उपाध्यक्ष,
   नगरीय विकास प्राधिकरण, उत्तर प्रदेश ।
3. मुख्य नगर एवं ग्राम नियोजक,
   नगर एवं ग्राम नियोजन विभाग, उ० प्र०,
   लखनऊ ।

अनुभाग-1

लखनऊ : दिनांक : नवम्बर 16, 1996

विषय- जनहित याचिका संख्या 21552/96 राकेश कुमार जैसवाल बनाम राज्य सरकार ।

उपरोक्त विषय पर माननीय उच्चतम न्यायालय द्वारा यह निर्णय दिया गया है कि :-
गंगा नदी के किनारे बसे नगरीय क्षेत्र में विकसित होने वाली कालोनियों के अलावा
नगरीयों के अनुमोदन से पूर्व यह सुनिश्चित होना आवश्यक है कि कालोनी के
सीवर तथा सेप्टिक से नदी प्रदूषित न हो तथा अंतिम सर्टिफिकेट के पश्चात ही उसे नदी में
छोड़ा जाए ।
ऐसे नगरों में नदी के 500 मीटर क्षेत्र में किसी भी प्रकार की कोई गतिविधि अनुमन्य न
की जाए ।
उक्त निर्णय निजी निर्माताओं के साथ साथ आवास विकास परिषद तथा प्राधिकरणों
पर भी समान रूप से लागू होगा ।

अतः मुझे यह कहने का निदेश हुआ है कि शासन के उक्त निर्णय का अनुपालन कड़ाई
पूर्वक किया जाये ।

यह आदेश तत्काल प्रभावी होगा ।

भवदीय,

(अतुल कुमार गुप्ता)
सचिव ।

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संख्या – 320/9–आ–3–2000–127काम्प/99

प्रेषक,

अतुल कुमार गुप्ता,
सचिव,
उत्तर प्रदेश शासन।

सेवा में,

1. उपाध्यक्ष,
गंगातट विकास प्राधिकरण,
उत्तर प्रदेश।
2. आवास आयुक्त,
उ0प्र0 आवास एवं विकास परिषद,
लखनऊ।
3. मुख्य नगर एवं ग्राम नियोजक,
नगर एवं ग्राम नियोजन विभाग,
उत्तर प्रदेश, लखनऊ।

आवास अनुभाग–3

लखनऊ : दिनांक : 05 फरवरी, 2000

विषय : गंगा नदी तट पर बड़े नगरों में किनारे से 200 मीटर तक किसी भी प्रकार की गतिविधियां अनुमन्य न किए जाने के प्रतिबन्ध को शिथिल किए जाने के संबंध में।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या–2810/9–आ–1–98 दिनांक 23 सितम्बर, 1998 एवं शासनादेश संख्या–4503/9–आ–1–98 दिनांक 16 नवम्बर, 1998 की ओर आपका ध्यान आकृष्ट करते हुए मुझे यह कहने का निदेश हुआ है कि उपर्युक्त शासनादेशों के प्रस्तर–2 में गंगा नदी तट पर बड़े नगरों में किनारे से 200 मीटर तक किसी भी प्रकार की गतिविधियों अनुमन्य न किए जाने का निर्णय लिया गया था। शासन द्वारा इस सम्बन्ध में सम्यक विचारोपरान्त यह निर्णय लिया गया है कि उक्त प्रतिबन्ध को धार्मिक स्थलों, आश्रम एवं सार्वजनिक सुविधाओं के हित में किये जा रहे – निर्माण कार्यों के लिए निम्नलिखित शर्तों के साथ शिथिल कर दिया जाय :–

1– हरित पट्टी के अनुरूप भूखण्ड के 10 प्रतिशत से अधिक भाग पर निर्माण अनुमन्य न होगा। एफ0ए0आर0 15 प्रतिशत से अधिक न होगा परन्तु यदि महायोजना में इससे कम अनुमन्य है, तो उतना ही अनुमन्य होगा।
2– ड्रेनेज सीधे गंगा नदी में नहीं अवमुक्त किया जायेगा, वरन् अन्य नालों आदि में ले जाने की व्यवस्था की जानी होगी।
3– यदि क्षेत्र में सीवेज व्यवस्था नहीं है तो निकटस्थ शौचालय/धर्मशाला आदि इन प्रयोजनों में अनुमन्य नहीं की जायेगी ताकि गंगा नदी में मल न जाने पाये।

उपर्युक्त वर्णित शासनादेश दिनांक 23.9.1998 एवं दिनांक 16.11.1998 को इस सीमा तक संशोधित समझा जाय।

भवदीय,

(अतुल कुमार गुप्ता)
सचिव।

\\Anjani\My documents\Hindi Temporary.doc

कमशः.....2

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संख्या – 320(1)/9–आ–3–2000–127काम्प/99 तद्दिनांक।

प्रतिलिपि निम्न लिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित :–

1. मुख्य अभियन्ता (गंगा) एवं मोडल अधिकारी, उत्तर प्रदेश जल निगम, लखनऊ।
2. सचिव, उत्तर प्रदेश शासन, नगर विकास विभाग।
3. उपाध्यक्ष, गंगातट विशेष क्षेत्र विकास प्राधिकरण, उत्तर प्रदेश।

आज्ञा से,

(जावेद एहतेशाम)
उप सचिव।

\\Anjani\Mydocuments\Misc Temporary.doc

प्रेषक,

अनिल कुमार गुप्ता,
सचिव,
[illegible]

सेवा में,

[1] [illegible]
[illegible]
उत्तर प्रदेश,

[2] आयुक्त,
आवास एवं विकास परिषद,
लखनऊ।

[3] मुख्य नगर एवं ग्राम नियोजक,
नगर एवं ग्राम नियोजन विभाग,
उत्तर प्रदेश, लखनऊ।

आवास अनुभाग-3

लखनऊ: दिनांक: 31 जुलाई, 2000

विषय:- गंगा नदी तट पर हरे भरे भागों में किनारे से 200 मी० तक किसी भी प्रकार की गतिविधियाँ प्रतिबन्ध न किये जाने के प्रतिबन्ध को शिथिल किये जाने के संबंध में।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या-320/9-आ-3-2000-127 काम्य/99, दिनांक 05 फरवरी, 2000 की ओर आपका ध्यान आकृष्ट करते हुए मुझे यह कहने का निदेश हुआ है कि गंगा नदी तट के किनारे 200 मी० तक लगाये जाने वाले प्रतिबन्धों को गंगा नदी को प्रदूषण से बचाने की दृष्टि से [illegible] पर भी स्पष्ट है कि हरिद्वार जैसे कुछ तीर्थ स्थल गंगा के तट पर है और वहाँ गंगा नदी तथा उसके तट पर धार्मिक मान्यताओं से जुड़े हुए मठ एवं आश्रम वहाँ की संस्कृति के अभिन्न अंग है। धार्मिक भावनाओं से जुड़े इन भवनों, जो सार्वजनिक सुविधाओं का ही एक भाग है, को पूर्णतः प्रतिबन्धित किया जाना उपयुक्त न होगा परन्तु गंगा नदी को प्रदूषण से बचाने के लिए भी समुचित व्यवस्था आवश्यक होगी।

उपर्युक्त वर्णित स्थिति में शासनादेश दिनांक 05 फरवरी, 2000 द्वारा जारी में किये गये शिथिलीकरण के स्थान पर यह निर्णय लिया गया है कि गंगा नदी के किनारे ऐसे स्थानों का जो धार्मिक मान्यताओं से जुड़े है, जहाँ का स्वरूप मुख्यतः तीर्थ है, तटों पर मठ-, आश्रम- मन्दिर का निर्माण कतिपय शर्तों के अधीन - अनुमन्य कर दिया जाय। यह शर्तें निम्नवत होंगी:-

[1] भू-आच्छादन 35% तथा तल क्षेत्र अनुपात [FAR/COVERAGE] 1.5 आवश्यक सार्वजनिक सुविधाओं के अतिरिक्त ही अनुमन्य हो।

.....2/

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(2) आवेदक को अपने व्यक्तिगत खर्चे से आवेदन के साथ एक योजना ... करनी होगी जिसे ... द्वारा स्वीकृत होने के बाद ही कार्य प्रारम्भ किया जा सकेगा।

(3) ... पेयजल ... से प्रदूषण नहीं फैलना चाहिए अन्यथा आवेदक ... नालों आदि से ले जाने की व्यवस्था करना होगा।

(4) यदि क्षेत्र में सीवरेज व्यवस्था नहीं है तो निवास स्थान/फैक्ट्री आदि का गंदा पानी को प्रदूषित नहीं की जायेगी अन्यथा नहीं ले जाने ... अन्य प्रदूषण ... करने पड़ेंगे।

(5) यह योजना ... द्वारा स्वीकृत/अस्वीकृत होने/... संशोधन ... विकास प्राधिकरण द्वारा ... स्वीकार न किये जाने पर निष्पादनुसार वापिस ले ली जायेगी।

उक्त निर्णय अभ्यावेदन दिनांक, 05 फरवरी, 2000 तक सीमा तक संशोधित समझा जाय।

भवदीय,

अतुल कुमार गुप्ता
सचिव।

संख्या-124 सी0वी0प्रा0/9-आ-3-2000 तद्दिनांक

प्रतिलिपि: निम्नलिखित को इस संबंध में आवश्यक कार्यवाही हेतु प्रेषित:-

(1) मुख्य अभियन्ता (गंगा), नोडल अधिकारी, उ0प्र0 जल निगम, लखनऊ।

(2) सचिव, नगर विकास विभाग, उ0प्र0 शासन।

(3) उपाध्यक्ष, समस्त मंडल क्षेत्र विकास प्राधिकरण, उ0प्र0।

आज्ञा से,

(जावेद अहमद)
उप सचिव।

FROM: B.K. GUPTA

संलग्नक - सं. - 3-

(3)

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संख्या - 840/9-आ-3-2001-127 काम्प /99

प्रेषक,

श्री अतुल कुमार गुप्ता,
सचिव,
उत्तर प्रदेश शासन।

सेवा में,

1. आवास आयुक्त,
   उ० प्र० आवास एवं विकास परिषद,
   लखनउ।
2. उपाध्यक्ष,
   समस्त विकास प्राधिकरण,
   उत्तर प्रदेश।
3. मुख्य नगर एवं ग्राम नियोजक,
   नगर एवं ग्राम नियोजन विभाग,
   उत्तर प्रदेश, लखनउ।

आवास अनुभाग - 3 लखनउ दिनांकः 11 अप्रैल, 2001

विषय :- गंगा नदी के तट पर बसे नगरों के किनारे से २०० मीटर तक किसी भी प्रकार की गतिविधियों को अनुमन्य न किए जाने के प्रतिबन्ध का शिथिलीकरण।

महोदय,

उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि प्रदेश के गणमान्य व्यक्तियों द्वारा शासन के संज्ञान में यह तथ्य लाया गया है कि शासनादेश संख्या 4503/9-आ-1-1998, दिनांक 16.11.1998 द्वारा गंगा नदी तट से 200 मीटर क्षेत्र में किसी भी प्रकार की गतिविधियों को अनुमन्य न किए जाने का प्रतिबन्ध लागू किये जाने से गंगा नदी के तट पर बसे नगरों में यह समस्या उत्पन्न हो गई है, कि गंगा तट पर स्थित प्राचीन भवनों की मरम्मत एवं जीर्णोद्धार के कार्य के लिए भी अनुमति नहीं दी जा रही है, ऐसे प्राचीन भवनों में भव्य हैरिटेज भवन भी सम्मिलित है, जिनका संरक्षण करना राज्य सरकार की प्रमुख नीति के अन्तर्गत आता है, और इस सम्बन्ध में भारत सरकार द्वारा समय-समय पर दिए गए सुझावानुसार विशिष्ट व्यवस्था भी की जा रही है। शासन के संज्ञान में यह भी तथ्य लाया गया है कि वाराणसी में गंगा घाट पर कुछ ऐसे पुराने

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हैरिटेज भवन हैं, जिनकी धार्मिक, सांस्कृतिक एवं ऐतिहासिक मान्यतायें भी जुड़ी हैं, और यदि ऐसे भवनों के मरम्मत, रखरखाव व जीर्णोद्धार कार्य के लिए उक्त प्रतिबन्ध लागू रखा गया तो शनैः शनैः काशी की संस्कृति से जुडे उक्त भवन लुप्त होते जायेंगे।

अतः गंगा नदी के किनारे स्थित प्राचीन भवनों, हैरिटेज भवनों के धार्मिक, सांस्कृतिक एवं कलात्मक महत्व को दृष्टिगत रखते हुए शासन द्वारा सम्यक विचारोपरान्त यह निर्णय लिया गया है कि सामान्य श्रेणी के सभी निर्मित भवनों की मरम्मत एवं जीर्णोद्धार से सम्बन्धित सभी कार्य अनुमन्य किये जायं अन्यथा ऐसे कार्य बिना अनुमति के होंगे और उन्हें रोके जाने पर प्रतिरोध होगा। इसके अतिरिक्त इस दृष्टि से कि प्राचीन संस्कृति की अक्षुण्णता को बचाए रखा जाना आवश्यक है, अतएव हैरिटेज भवनों के संरक्षण के सम्बन्ध में "इन्टैक" INTACH के परामर्श से कार्य अनुमन्य किये जाय।

परन्तु उक्त पर अनुमति देने से पूर्व यह सुनिश्चित करना आवश्यक होगा कि इन भवनों में सीवरेज की ऐसी व्यवस्था है कि उसका निस्तारण नदी में न करते हुए नगर की सीवर व्यवस्था के माध्यम से हो, जहाँ सीवर निस्तारण की ऐसी व्यवस्था नहीं है, वहाँ ऐसी व्यवस्था करने के लिए आवश्यक कार्यों को भी इस प्रतिबन्ध से मुक्त रखा जाना आवश्यक होगा।

शासनादेश दिनांक 16.11.98 द्वारा गंगा नदी तट पर 200 मीटर क्षेत्र में निर्माण संबंधी प्रतिबन्ध उक्त सीमा तक शिथिल/संशोधित समझा जाय।

भवदीय
ह०-अपठनीय
(अतुल कुमार गुप्ता)
सचिव

संख्या 840-111/9-आ-3-2001-तद्दिनांकः

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषितः

1. मुख्य अभियन्ता-गंगा/ नोडल अधिकारी, उत्तर प्रदेश जल निगम, लखनउ।
2. सचिव, नगर विकास विभाग, उत्तर प्रदेश शासन।
3. उपाध्यक्ष, समस्त विशेष क्षेत्र विकास प्राधिकरण, उत्तर प्रदेश।

आज्ञा से-
ह०-अपठनीय
(जावेद एहतेशाम)
उप सचिव

2/2

Encl-12 140

MAHENDRA SHAH

Attorney to
Apoorva Kumar, Vivek Kumar, Anoop Kumar & Manish Kumar

August 20, 2001

The Principal Secretary & Commissioner, Aawaas,
Government of U.P.
Lucknow

Dear Sir,

Re: **Restoration, Conservation & Renovation of Darbhanga Palace at Darbhanga Ghat, Varanasi as per sanctioned plan by the VDA**

Situated on the world famous Ghats of Varanasi, Darbhanga Palace, built approx.200 years earlier is one of the few landmark buildings of heritage importance. This building constructed of *lakhouri* bricks, mud/lime mortar, stone *patias* termite infested wooden beams, was for the past 7 to 8 decades was completely uncared for by the previous owners and was in extreme dilapidated condition. However Varanasi Development Authority sanctioned a plan for restoration, reconstruction and renovation for heritage hotel. As the restoration/reconstruction work started, it was realized that certain walls have developed cracks and can not withhold the load of the slabs. It was only such walls or the falling slabs that were either strengthened or reconstructed at the same place on the advice of the engineers for the maintenance of the structural safety & stability of the building which is no deviation of the sanctioned plan. Needless to mention any special features e.g. stone cladding etc. is to be maintained. But when the work started, every now and then, on one pretext or other the work is suspended by the VDA resulting in further deterioration of unfinished work. A brief detail of the sequence of proceedings with the VDA are given below for your kind consideration:

- The restoration, reconstruction and renovation plan duly reviewed by INTACH along with their report (Annexure 1) was sanctioned by the VDA (Annexure 2) and Rs.65,000/- deposited (Annexure 3) towards sewer charges.

- Notice dated 13.2.2001 u/s 27 & 28 of the *UP Nagar Niyojan & Vikas Adhiniyam 1973* was served asking that pillars at the back side and shuttering for two rooms in the center are being erected and therefore the work should be stopped (Annexure 4 A & B)

Kamla Kutir, Sankat Mochan Marg, Varanasi 221 005 Telefax : 0542 311755 Phone : 311755

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Continued ..... Page 2

- The plan was made *'Nishprabhavi'* (Annexure 5) because of G.O. dated 16.11.98 restricting *.....any activity within 200 meters from the river bank.*
- After receiving a new G.O. dated 11.4.2001 VDA again made our plan *'Prabhavi'* (Annexre 6)
- During the periodical site inspection from time to time by the VDA authorities and our meeting with the VC, it was suggested to photograph the existing salient features of the building and submit to the VDA, which was complied with vide our letter dated 3.7.2001 (Annexure 7)
- A notice dated 30.6.2001 u/s 27 & 28 of *UP Nagar Niyojan & Vikas Adhiniyam 1973*, stopping the work alleging that the work is being continued against the sanctioned plan (Annexure 8 A & B)
- A reply dated 9.7.2001 stating the facts were submitted to the VDA (Annexure 9) and we met the VC who suggested for the vedeography & still photography of the entire building. Following the instructions, we helped the VDA authorities for the same and a vedeo film for almost one-hour with 67 still photographs were taken on 16.7.2001.
- A notice dated 2.8.2001 asking us to submit compounding plans were served on us (Annexure 10)
- A letter dated 10.8.2001 was again served on us asking to submit a revised plan (Annexure 11)
- Again a letter dated 14.8.2001 has now been served on us asking that we can not change the name of the building and that the sanction is not given for running the hotel (Annexure 12)
- Apart from the periodical inspection of the site, on the instruction of the VC a team of approx.15 officers from the Secretary to the down below inspected the site and found and reported that apart from certain slabs or strengthening of the walls, no encroachment on any side has been done by us.
- The VDA authorities, without our knowledge or permission have again done the vedeo photography of the building on 18.8.2001.

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Continued .... page 3

- We have also requested the INTACH to again survey the place and give their report about the restoration/reconstruction work, which was being done by us before the work was stopped by the VDA.(Annexure 13)

Sir, we understand that the policy of the UP Government is to promote such restoration, conservation and renovation work so that heritage buildings in the state could be preserved as well as such efforts would help in the promotion of tourism also.

We are therefore, with due regard, approaching you with the request to find out the facts yourself and take suitable decision so that we may continue with the work, which has been stopped by the VDA, and is lying half-finished.

An earliest action is needed failing which this monumental building will also have the same fate of falling down as other properties on the *Ghats* of Varanasi have had in the past.

Thanking you,

Yours faithfully,

MAHENDRA SHAH
Attorney

Encl: Annexures 1 to 13 as above

क्रम-संख्या–198 (क)

रजिस्ट्रेशन नम्बर–जी०–11/लाई०
न्यूज पेपर/91/05–06
लाइसेन्स टू पोस्ट ऐट कन्सेशनल रेट

143

सरकारी गजट, उत्तर प्रदेश

उत्तर प्रदेशीय सरकार द्वारा प्रकाशित

असाधारण

विधायी परिशिष्ट

भाग–4, खण्ड (ख)

(परिनियत आदेश)

लखनऊ, बृहस्पतिवार, 31 अगस्त, 2006

भाद्रपद 9, 1928 शक सम्वत्

उत्तर प्रदेश सरकार

आवास एवं शहरी नियोजन अनुभाग–3

संख्या 4065/VIII-3-2006-11 विविध -2006

लखनऊ, 31 अगस्त, 2006

अधिसूचना

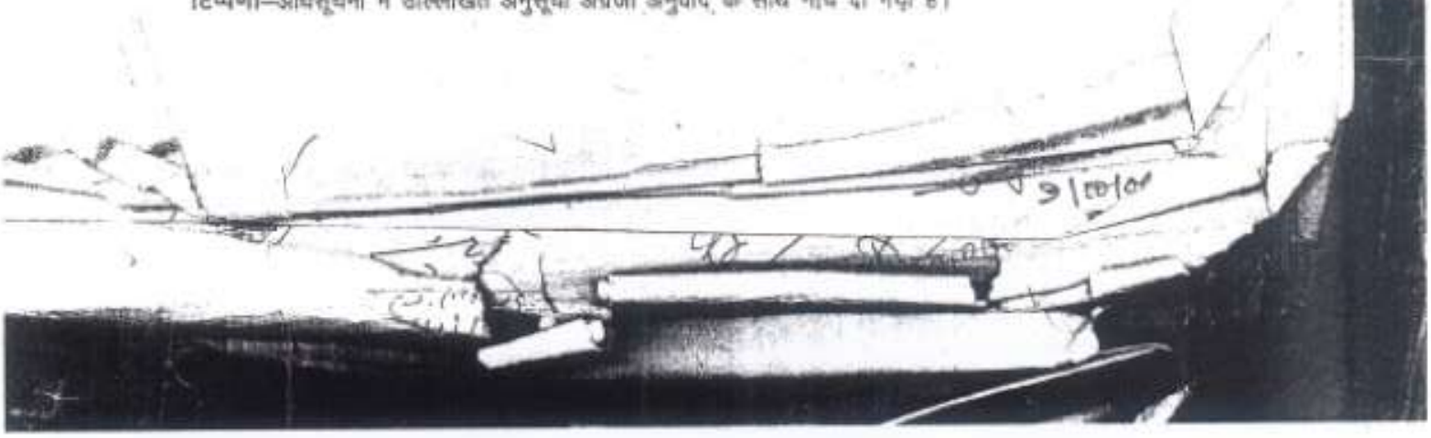
प०आ०–1198

चूँकि वाराणसी की महायोजना में नीचे दी गयी अनुसूची में यथावर्णित संशोधन करने के संबंध में आपत्तियों और सुझाव प्राप्त करने की एक सूचना दैनिक समाचार-पत्र "दैनिक हिन्दुस्तान" एवं "अमर उजाला" में दिनाँक 15.06.2006 को प्रकाशित की गयी थी,

और, चूँकि उपर्युक्त सूचना में विनिर्दिष्ट समय के भीतर प्राप्त एक आपत्ति का नियमानुसार निस्तारण वाराणसी विकास प्राधिकरण द्वारा कर दिया गया है,

अतएव, अब, उत्तर प्रदेश राष्ट्रपति अधिनियम (परिष्कारों सहित पुनः अधिनियम) अधिनियम, 1974 (उत्तर प्रदेश अधिनियम संख्या 30 सन् 1974) द्वारा परिष्कारों सहित पुनः अधिनियमित उत्तर प्रदेश नगर योजना और विकास अधिनियम, 1973 (राष्ट्रपति अधिनियम संख्या 11 सन् 1973) की धारा-13 की उपधारा (2) के अधीन शक्ति का प्रयोग करके राज्यपाल, वाराणसी की महायोजना में दी गयी अनुसूची में यथावर्णित निम्नलिखित संशोधन करते

टिप्पणी–अधिसूचना में उल्लिखित अनुसूची अंग्रेजी अनुवाद के साथ नीचे दी गयी है।



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उत्तर प्रदेश सरकार
आवास एवं शहरी नियोजन अनुभाग–3
संख्या–2629/8–3–06–11 विविध/2006
लखनऊः दिनाँक 13 जून, 2006

सूचना

चूँकि राज्य सरकार वाराणसी की महायोजना में संशोधन जैसा कि नीचे अनुसूची में दिखाया गया है, करना चाहती है,

अतएव, अब, उत्तर प्रदेश राष्ट्रपति अधिनियम (परिष्कारों सहित पुनः अधिनियमित) अधिनियम, 1974 (उ0प्र0 अधिनियम संख्या–30 सन् 1974) द्वारा परिष्कारों सहित यथा पुनः अधिनियमित उ0प्र0 नगर योजना और विकास अधिनियम, 1973 (राष्ट्रपति अधिनियम संख्या–11 सन् 1973) की धारा–13 की उपधारा–(3) के उपबन्धों के अनुसरण में एतदद्वारा यह सूचना जनता से प्रस्तावित संशोधनों के सम्बध में आपत्तियाँ और सुझाव आमंत्रित करने की दृष्टि से प्रकाशित की जाती है। सभी आपत्तियाँ और सुझाव उपाध्यक्ष, वाराणसी विकास प्राधिकरण, वाराणसी को सम्बोधित और लिखित रूप से तीन प्रतियों में प्रेषित किए जाने चाहिए। केवल उन्हीं आपत्तियों और सुझाव पर विचार किया जायेगा जो इस सूचना के समाचार पत्र में प्रकाशन की तिथि से 07 दिन के अन्दर प्राप्त होंगे।

अनुसूची

स्थान व जिले का नाम	आराजी संख्या	क्षेत्रफल वर्ग फिट में	वर्तमान भू–उपयोग	प्रस्तावित भू–उपयोग
मौजा–नगवा वाराणसी	150/1	13536	पार्क/क्रीडा स्थल/खुला क्षेत्र/बाढ़ प्रभावित क्षेत्र	सामुदायिक सुविधा (अतिथिगृह एवं न्यायघाट)

योग–13536 वर्ग फिट

13/6/06
(के.एल. मीना)
सचिव।

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संख्या–2629 / 8–3–2006–11विविध / 2006

प्रेषक,

के.एल.मीना,
सचिव,
उत्तर प्रदेश शासन।

सेवा में,

उपाध्यक्ष,
वाराणसी विकास प्राधिकरण,
वाराणसी।

आवास एवं शहरी नियोजन अनुभाग–3 लखनऊः दिनांक 13 जून, 2006

विषयः वाराणसी में गंगा नदी के तट पर प्रस्तावित अतिथिगृह एवं न्यायघाट के निर्माण हेतु आराजी संख्या 150/1 मौजा नगवा का भू–उपयोग 'पार्क एवं क्रीडास्थल/खुला क्षेत्र/बाढ प्रभावित क्षेत्र' से 'सामुदायिक सुविधा (अतिथिगृह एवं न्यायघाट) में परिवर्तित करने के संबंध में।

महोदय,

उपर्युक्त विषयक नगर नियोजक, वाराणसी विकास प्राधिकरण के पत्र संख्या–820/वि0प्र0/न.नि./06–07, दिनांक 12–6–2006 का कृपया सन्दर्भ ग्रहण करें। प्रश्नगत भू–उपयोग परिवर्तन के संबंध में मुख्य नगर एवं ग्राम नियोजक का अभिमत प्राप्त किया गया। मुख्य नगर एवं ग्राम नियोजक ने निम्न शर्तों एवं प्रतिबन्धों सहित इस भू–उपयोग परिवर्तन पर विचार करने का मत दिया है:–

1. बंधी प्रखण्ड, वाराणसी की आख्यानुसार प्रश्नगत स्थल चूंकि उच्चतम बाढ़ स्तर से नीचे है, अर्थात बाढ़ प्रभावित है, अतः प्रश्नगत क्षेत्र को बाढ़ से सुरक्षा संबंधी समुचित उपाय सुनिश्चित करते हुए ही भू–उपयोग परिवर्तन एवं निर्माण अनुज्ञा प्रदान किया जाना उचित होगा।
2. शासनादेश संख्या–2380/8–3–06–11 विविध/06 दिनांक 1–6–06 द्वारा गंगा नदी के किनारे से 200 मी0 के अन्तर्गत सार्वजनिक सुविधायें से संबंधित निर्माण कार्य भी अनुमन्य किये जाने का निर्णय लिया गया है तथा नदी तट पर 200 मी0 परिधि में कोई निर्माण न करने विषयक प्रतिबन्ध न्याय घाट एवं अतिथिगृह के निर्माण के लिए अपवादस्वरूप शिथिल किया गया है। उक्त शासनादेश में यह भी निर्देश है कि पूर्व में

Nishant(30.Oct.03.523)

(113) 146

निर्गत शासनादेश दि0 5–2–2000 तथा दि0 31–7–2000 की शेष शर्तें एवं प्रतिबन्ध यथावत् लागू रहेगे।

2– इस संबंध में मुझे यह कहने का निदेश हुआ है कि शासन द्वारा सम्यक विचारोपरान्त वाराणसी विकास प्राधिकरण बोर्ड द्वारा संस्तुत प्रस्ताव पर, न्याय विभाग की सहमति तथा मुख्य नगर एवं ग्राम नियोजक के उपर्युक्त शर्तो एवं प्रतिबन्धों के अधीन;अनुमोदन प्रदान कर दिया गया है।

3– इस सबध में महायोजना मे प्रस्तावित भू–उपयोग परिवर्तित करने हेतु सूचना का आलेख्य संलग्न कर प्रस्तुत करते हुए अनुरोध है कि कृपया संलग्न सूचना का आलेख्य स्थानीय पढ़े जाने वाले किन्हीं दो लोक महत्व के समाचार–पत्रों में प्रकाशित कराए तथा प्राप्त आपत्तियों एवं सुझावों पर अपनी आख्या/संस्तुति समाचार–पत्रों की कतरन के साथ शासन को उपलब्ध कराने का कष्ट करें। इस मद में होने वाला व्यय प्राधिकरण द्वारा वहन किया जायेगा।

4– प्रश्नगत भू–उपयोग परिवर्तन के लिए नियमानुसार देय शुल्क का भुगतान भी वाराणसी विकास प्राधिकरण को किया जायेगा। कृपया आराजी संख्या–150/1 मौजा नगवा, वाराणसी के क्षेत्रफल 13536 वर्ग फिट का भू–उपयोग परिवर्तन, 'पार्क एवं क्रीडास्थल/खुला क्षेत्र/बाढ़ प्रभावित क्षेत्र' से 'सामुदायिक सुविधा' (अतिथिगृह एवं न्यायघाट) में परिवर्तित करने हेतु तत्काल आवश्यक कार्यवाही सुनिश्चित कराने का कष्ट करें।

संलग्नक: यथोक्त।

भवदीय,

13/6/06

(के.एल.मीना)

सचिव।

(2)

Nishant Gd.Oct.05(324)

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

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SUBMISSIONS/SYNOPSIS

ON BEHALF OF

RESPONDENT NOS. 6 & 7

IN

CIVIL MISC. WRIT PETITON NO. 31229 OF 2005
(Under Article 226 of the Constitution of India)
DISTRICT : VARANASI

Kautilya Society and others --------Petitioners

Versus

State of Uttar Pradesh and others ------Respondents

REPORTS OF INTACH

First Report of INTACH dated 11-4-1996

Professor A.G.K. Menon, renowned architect of INTACH and Ms. Amita Baig, Director General, (Projects) Architectural Heritage INTACH made inspection of Darbhanga Palace on April 8/9th, 1996 in respect of proposal for re-use of the building stating that :-

We were shown a photograph of the building taken about 80 years ago. This provides an authentic record of what the building originally looked like even before the elevator was added to the façade. We advised that this photograph should be used to control the façade of the building. The Architect and owner confirmed that they intended to do so.

Some part of the structure we noted was in a precarious or collapsed condition. We noted that these would be rebuilt in conformity with the existing structure. This is necessary for the safety of the structure and so is in order.

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and confirmed that :-

(i) the proposal for restoration and reuse conform to accepted conservation norms application and

(ii) the modifications introduced in the building will not in any way alter the historic fabric of the structure which are being undertaken for structural stability.

We believe that the restoration and reuse of the Darbhanga Ghat will greatly enhance the value of Varanasi and will be a pioneering project in the up-gradation of the Ghat buildings in Varanasi.

148 1996 (16)

INTACH

Mrs. Amita Baig,
Director General,
(Projects)
Architectural Heritage

Indian National Trust
for Art and Cultural Heritage

No.F.5-89/96-INTACH

April 11,1996

Dear Mr Mahendra Shah

I am writing with reference to my visit to Darbanga Ghat alongwith our expert/concultant Prof.A.G.K.Menon. I have pleasure in enclosing herewith the report of Prof.A.G.K.Menon on the visit to the site and based on his review of the project drawings and proposals for the restoration and reuse of this heritage building.

We are pleased to confirm that (i) the proposal for restoration and reuse conform to accepted conservation norms applicable and (ii) the modifications introduced in the building will not in any way alter the historic fabric of the structure which are being undertaken for structural stability.

We believe that the restoration and reuse of the Darbanga Ghat will greatly enhance the value of Varanasi and will be a pioneering project in the upgradation of the Ghat buildings in Varanasi.

We wish you all success in this venture and hope that you will realise the project as early as possible.

Regards,

Yours sincerely,

Amita Baig

(Amita Baig)

Enclu: As above

Mr.Mahendra Shah,
Director,
Great Value Hotels Limited,
Kamla Kutir,
Sankat Mochan Marg,
Varanasi-221005

Bhanushyam, Near Humayun Tomb, Nizamuddin, New Delhi-110 013
Phones : 463 1818, 463 2267, 463 2269 Fax : 91-11-463 1290

Heritage Legal Locker

N T A 149 C II

Report on the Inspection of the Darbangha Ghat Building, Varanasi

An inspection was carried out of the proposal for the reuse of the Darbangha Ghat Building on April 8/9,1996 at the invitation of the owner, Shri Mahendra Shah by Mrs.Amita Baig and the conservation consultant Prof.A.G.K.Menon. The architect Shri Kishore Kapoor was present to explain the restoration/reuse scheme along with drawings.

At the outset it must be stated that the proposal to re-use such an important landmark on the Ghat is a step in the right direction. It will maintain the "ghat-scape" and bring in a positive conservation force into the development of the Ghats. Moreover, this building is in an area identified in the initial INTACH study of 1986 as containing the most valuable ensemble of elements of the heritage to be conserved and appropriately reused.

The building we understand is being converted into a Heritage Hotel with about 37 rooms and supporting public areas and service. We examined the proposal and agreed that the following steps to ensure the conservation point of view

We were shown a photograph of the building taken about 80 years ago. This provides an authentic record of what the building originally looked like even before the elevator was added to the facade. We advised that this photograph should be used to control the facade of the building. The Architect and owner confirmed that they intended to do so.

The architect also showed us the measured drawings and the photographic record of the existing condition of the building. We noted that no substantial change to what existed was being attempted except as necessitated by the placing of internal partitions for defining room and other functional areas. Again we endorse this adherence to the recommended procedure for undertaking stuctural and other modifications. A proper record of the work done should be prepared after the work is completed for INTACH's records.

Some part of the structure we noted was in a precarious or collapsed condition. We noted that these would be rebuilt in conformity with the existing structure. This is necessary for the safety of the structure and so is in order.

We were also shown a demonstration of stone-cleaning using water jet. The cleared work inspected was satisfactory.

In general we find that the work proposed to be undertaken is following a correct procedure and will meet the objectives of the conservation proposals for the ghats made by INTACH in 1986. We have no objection to its implementation in the manner shown to us.

A.G.Krishna Menon

Amita Baig

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Second Report of INTACH dated 10-7-1996

Observing that several historical buildings, havelis have fallen down for the last about 50 years, number of buildings, havelies of historical importance of the country are in dilapidated condition and it is very difficult for the owners to bear expenses of their renovation, re-construction etc. It is also stated that INTACH advised Government of India, Archeological Department and Ministry of Tourism to [illegible] these buildings/havelis as heritage hotels by commercializing the same so that [illegible]side bui[illegible]g of historical and archeological importance be preserved for future and secondly foreign tourism be attracted so that country may get foreign currency and that said suggestions have been given approval by Government of India and several other States specially Rajasthan, Madhya Pradesh and according to newspaper reports State of U.P. is also going to approve such schemes. It has been further stated that representatives of INTACH, New Delhi Head Quarters have come and made inspection of Darbhanga Palace and expressed their concern about present dilapidated condition of the building and agreed for proposal of plan of Heritage Hotel, with observation that said building due to neglect and for want of look after is at the stage of falling down to the ground and most of its structure has been given support of Balli so that it may not fell down. It has also been stated that front elevation and main attractive portion of the building shall be kept in its original form and that old portion which have fell down, shall be constructed according to original structure otherwise within a year or two this building will fallen down and in place of that a new building of concrete shall be made.

I N T A C H

The Indian
National Trust for
Art and Cultural
Heritage

Dr. Kalyan Krishna
Convener
Varanasi Regional Chapter

"Sita Nivas"
Banaras Hindu University
Varanasi-221 005
Phone : 310876, 312116

10 - 7 - 1996

सेवा में
अध्यक्ष, वाराणसी विकास प्राधिकरण, एवं
आयुक्त वाराणसी मण्डल
वाराणसी

महोदय,

श्रद्ध. श्री राजीव गांधी की अध्यक्षता में गठित "भारतीय सांस्कृतिक निधि", विगत कोई ढेढ़ दशक से सम्पूर्ण देश में सांस्कृतिक धरोहरों के पुनर्स्थापन, जीर्णोद्धार, प्राचीन संस्कृति की रक्षा इत्यादि के कार्यों में संलग्न है इसी श्रृंखला में निधि की वाराणसी ईकाई भी कार्यरत रही है। पूर्व में प्रशासन के सहयोग से गंगोत्री-यमुनोत्री धाम एवं बदरीनाथ का जीर्णोद्धार, सुरक्षा-धाम की [illegible] का जीर्णोद्धार एवं [illegible], काशी में [illegible] जिनसे भवनों की सुरक्षा को खतरा उत्पन्न हो गया था को गिरवाने का कार्य, वाराणसी के घाटों के को में विशेषज्ञों द्वारा तैयार की गई रिपोर्ट को प्रशासन तथा अन्य विभाग को दिया जाना; परन्तु कार्य योजना के दौरान काशी के घाटों का प्लान गिरिज विभाग को सर्वप्रथम का सरकार ने निर्माण कराया, विश्वनाथ भवन का प्लान, गए निर्मित गंगेय स्नेहालों का प्लान तैयार कराना इत्यादि कार्य किये गए हैं।

विगत कोई पचास वर्षों का वाराणसी का इतिहास देखा जाए तो अनेकों ऐतिहासिक महत्व की इमारतें, भवन आदि ध्वस्त हो गए - जिनका न तो सांस्कृतिक संस्थाओं सरकार प्रशासन ने पुनर्स्थापन

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N T A C H

The Indian
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किया । इसी प्रकार घाटों पर बने जो नए निर्माण हुए वे पुराने वास्तुशिल्प से सामंजस्य स्थापित करते हैं - जिससे घाटों की सुन्दरता को भारी क्षति पहुँची है - इसमें सरकेट प्रकाश एवं सीमेंट प्लास्टिक पेन्टिंग इत्यादि कुछ प्रमुख उदाहरण है । प्रशासन का ध्यान इस ओर विधि द्वारा आकृष्ट किये जाने पर जो अभय प्लास्टिंग पेन्टिंग तथा हरिश्चन्द्र घाट पर निर्मित सिद्धा शवदाह गृह निर्माण किए गए उसमें विधि द्वारा विशेषज्ञ वास्तुविदों का परामर्श उपलब्ध कराया गया । यदि आज भी देखा जाए तो अस्सी घाट से राजघाट तक घाटों पर स्थित अनेकों ऐतिहासिक सुन्दरता के भवन जीर्ण होते जा रहे हैं जिनमें कोई भी सामाजिक अथवा प्रशासनिक संस्था अथवा राज्य सरकार अपने जीर्णोद्धार में रुचि नहीं ले रही है । साथ ही इन प्राचीन भवनों पर अनेकों गैरा फिसल गए हैं - और शीघ्र ही यदि आवश्यक उपाय नहीं किए गए तो ये सुन्दर भवन ध्वस्त हो जाएंगे । इन घाटों पर स्थित भवन ऐसे महत्वपूर्ण - पुरातत्व के भी नहीं है - जिन्हें कोई अन्तर्राष्ट्रीय संस्था अथवा पुरातत्व विभाग अधिग्रहण कर इनकी सुरक्षा एवं रख रखाव के लिए ले लें और जो खत मंदिर घाट पर भवन पुरातत्व विभाग ने अधिग्रहीत भी किया है उसका रख रखाव बहुत संतोषप्रद नहीं है ।

सम्पूर्ण देश में इस प्रकार के अनेकों ऐतिहासिक महत्व के भवन/हवेलियाँ क्षतिग्रस्त एवं जीर्ण होते रहे

कृपया:-----

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है । इनके स्वामियों द्वारा इनके जीर्णोद्धार, पुनर्निर्माण पर होने वाले भारी व्यय को वहन करना असम्भव था । इस समस्या के समाधान के लिए निधि ने भारत सरकार, पुरातत्व विभाग, तथा पर्यटन मन्त्रालय को सुझाव दिया कि इन भवनों को व्यावसायिक रूप देकर - इन्हें विदेशी पर्यटकों के लिए हेरिटेज होटल बनाने की स्वीकृति प्रदान की जाए जिससे एक ओर ऐतिहासिक, पुरातात्व, के सुन्दर नमूने भविष्य के लिए सुरक्षित हो सकें तथा दूसरी ओर विदेशी पर्यटकों के आकर्षण के कारण देश में विदेशी मुद्रा की प्राप्ति भी हो । इस सुझाव को भारत सरकार तथा राज्य सरकारों ने हर्ष से सहर्ष स्वीकार की - तथा देश के अनेकों, ऐसे विशेषकर राजस्थान, उत्तर प्रदेश तथा गुजरात राज्यों के अनुसार अब उत्तर प्रदेश सरकार भी ऐसी योजनाओं को स्वीकृति देने जा रही है ।

वाराणसी में गंगा घाट पर ऐसी एक भव्य इमारत है दरभंगा कोठी जो कि बिना कोई पचास वर्षों से समुचित रख रखाव के अभाव में आज ध्वस्त होने की स्थिति में आ गई है इसके अधिकांश भाग को बल्लियों का सहारा देकर गिरने से रोका गया है । अभी कोई एक वर्ष पूर्व इस कोठी के स्वामियों दरभंगा राजवंश के सदस्यों ने इस भवन को जीर्णोद्धार एवं रख रखाव में होने वाले आर्थिक व्यय से

कतरा----

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आश्चर्य होने के कारण इसे विकय कर दिया - वर्तमान स्वामियों ने भारतीय सांस्कृतिक निधि से इसके जीर्णोद्धार/पुनर्निर्माण हेतु परामर्श लिया जनके इस निवेदन पर निधि के मई दिल्ली स्थित मुख्य कार्यालय से एक प्रतिनिधि मण्डल ने जिसमे पुरातत्व मे विशेष योग्यता के वास्तुविद भी थे वाराणसी आकर इस भवन का निरीक्षण किया तथा इसकी वर्तमान जर्जर हालत पर चिन्ता व्यक्त करते हुए वर्तमान भवन स्वामियो द्वारा प्रस्तावित हेरिटेज होटल के प्लान से सहमती व्यक्त करते हुए अपना प्रतिवेदन दिया - जिसकी छाया प्रतिलिपि आपके सुलभ अवलोकन हेतु संलग्न है । इस प्रस्तावित मानचित्र के अनुसार वर्तमान भवन के फ्रंट एलीवेशन तथा प्रमुख आकर्षक भागो को मूल स्वरूप मे सुरक्षित किया जाएगा । बाकी नयी जो पुराने भाग नष्ट होगए है उनका निर्माण भी मूल स्वरूप को अनुसार किया जाएगा ।ऐसी स्थिति मे भारतीय सांस्कृतिक निधि आपसे सविनय अनुरोध करती है कि काशी की मूल छवि को सुरक्षित रखने की कड़ी मे इस योजना को शीघ्र से शीघ्र अनुमति प्रदान की जाए अन्यथा यह भवन भी एक दो वर्षों मे ही ध्वस्त हो जाएगा और इस भव्य भवन के स्थान पर कांक्रीट की

क्रमशः----

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कोई नई इमारत खड़ी हो जाएगी जो वाराणसी के सुन्दर घाटों की छवि को कलंकित करेगी ।

पूर्ण विश्वास है कि प्रशासन इस प्रतिवेदन पर वांछित निर्णय लेगा ।

भवदीय

डा० कल्याण कृष्ण
संयोजक
भारतीय सांस्कृतिक निधि वाराणसी अध्याय

संलग्नक : उपरोक्तानुसार

प्रतिलिपि : आवश्यक निर्णय हेतु --
1. उपाध्यक्ष, वाराणसी विकास प्राधिकरण, वाराणसी
2. डायरेक्टर जनरल, प्रोजेक्ट, भारतीय सांस्कृतिक निधि, नई दिल्ली ।

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Third Report of INTACH dated 27-8-2001 alongwith covering letter dated 3-9-2001 and photographs which consists of Preamble, Status of Work, Technical Evaluation and discussion with Kautilya Society.

Relevant extracts are quoted below:-

Preamble :

1.....

2.....

3 Later, Dr. Kalyan Krishna and the undersigned also called on Ms. Vrinda Dar, General Secretary of the Kautilya Society, and discussed with her in detail the nature of work taking place at Darbhanga Palace.

Status of Work :

4.....

5. At the outset it is confirmed that the work was proceeding in accordance to the sanctioned plan. The site staff was also adhering to the general principles of storing heritage buildings for contemporary reuse.

6 .....

7 The Architect explained that during the process of cleaning and repairing the damaged works, they had noted dangerous cracks in walls and floors/roof, particularly at the western portion of the building. They consulted a professor of civil engineering from BHU who advised them to dismantle the entire wall/floor of the western portion and reconstruct it using concrete beams and columns. The architect explained that they would be restoring the looks of the new portion to match the old. This is an accepted procedure for this grade of heritage building being converted for reuse.

8. The promoters who explained that they had already awarded contracts to well-known craftsmen in Rajasthan to reproduce certain missing/damaged stone elements, particularly the missing bhurj on the southeast corner.

9. The architect also explained that the plenum space under the newly cast reinforced concrete slab would be used for mechanical and electrical services, and so internally, the final finished level of the false ceiling would match the original.

10. The promoters reiterated their desire to create a landmark building by maintaining the authentic "look" of the building, as only that strategy would ensure the commercial viability to this project.

Technical Evaluation

11. The undersigned examined all technical aspects of the work in progress and found that they were in order. The architect was familiar with the issues of

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restoration and was sensitively adding to the structural stability of the building while ensuring that its "looks" did nto change. These changes to the original fabric were duly evaluated and found to be in conformity with acceptable practices.

12.....

13.....

14.....

Discussion with Kautilya Society

15. The undersigned and Dr. Kalyan Krishna also met the General Secretary Ms. Vrinda Dar of the Kautilya Society and discussed at length her critical observations on the restoration work being carried out at the Darbhanga Palace.

16. There appeared to be two major concerns expressed by Ms. Dar. First, based on photographs she had taken of the west elevation of the building, she had concluded that the promoters were extending the footprint of the building. Second, she pointed out that the replacement of masonry walls with concrete framed structure was unnecessary and against the principles of conservation as practiced in Europe.

17. As regards the first observation, the plans of the original and proposed construction as sanctioned were shown to her to clarify that the building was following sanctioned plans, and was not exceeding the original footprint of the building. As regards her second observation, the undersigned explained the concept of restoration for reuse of heritage buildings wherein reconstructions of structurally unstable elements was permitted all over the world.

18.....

2001

2001

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(1)

INTACH

Indian National Trust for Art and Cultural Heritage

Dr. (Mrs.) Chuden Tshering-Misra, IAS
Member Secretary

September 3, 2001

Dear Dr Kalyan Krishna,

I am sending herewith a copy of the Report prepared by Prof. A.G.K. Menon after visiting the Darbhanga Palace Hotel at Varanasi on 22nd and 23rd of this month which also contains the photographs of the building. I am also enclosing a copy of the letter dated 28.8.2001 written by Ms. Vrinda Dar, General Secretary of Kautilya Society for Intercultural Dialogue, Varanasi to Vice-Chairman, INTACH containing her observations in the light of Prof. Menon's visit to Varanasi.

You will also notice from Prof. Menon's letter dated 28.8.2001 that no action is called for on renovation of the Kumaraswami Mutt at present.

With regards,

Yours sincerely,

(C.T. Misra)

Dr. Kalyan Krishna
Convenor, INTACH Varanasi Regional Chapter
Sita Nivas
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Varanasi – 221005

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REPORT ON INSPECTION OF THE RESTORATION WORK IN PROGRESS AT DARBHANGA PALACE, VARANASI BY M/S GREAT VALUE HOTELS LIMITED

(August 22-23, 2001)

Preamble

1. Dr. Kalyan Krishna, Convenor of INTACH'S Varanasi Chapter had requested the Central Office to depute an expert to inspect the work in progress at Darbhanga Palace in view of complaints alleging that the developers of the property were not following proper guidelines for restoring heritage buildings along the Varanasi Ghats. INTACH Central Office in turn requested the undersigned to carry out the inspection and file a technical evaluation report for due consideration. The inspection was carried out by the undersigned on August 22/23, 2001.

2. The inspection was carried out in the presence of, and with the assistance of the promoters, Shri Mahendra Shah and Shri Arvind Kumar, the architect for the project Shri Rishabh Chandra Jain and his site architect and engineer. Dr. Kalyan Krishna was also present.

3. Later, Dr. Kalyan Krishna and the undersigned also called on Ms. Vrinda Dar, General Secretary of the Kautilya Society, and discussed with her in detail the nature of work taking place at Darbhanga Palace.

Status of work

4. The work at site is at a stand still in compliance with an order issued by the Varanasi Development Authority on the grounds that the work was not proceeding in accordance with the sanctioned drawings.

5. At the outset it is confirmed that the work was proceeding in accordance to the sanctioned plan. The site staff was also adhering to the general principles of restoring heritage buildings for contemporary reuse.

6. The centering and shuttering material being used were of good quality and had been properly and securely placed following good engineering practices. A specialist

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engineer was available at site to explain the epoxy grouting procedure being followed.

7. The Architect explained that during the process of cleaning and repairing the damaged works, they had noted dangerous cracks in walls and floors/roof, particularly at the western portion of the building. They consulted a professor of civil engineering from BHU who advised them to dismantle the entire wall/floor of the western portion and reconstruct it using concrete beams and columns. The architect explained that they would be restoring the looks of the new portion to match the old. This is an accepted procedure for this grade of heritage building being converted for reuse.

8. The promoters who explained that they had already awarded contracts to well-known craftsmen in Rajasthan to reproduce certain missing/damaged stone elements, particularly the missing *bhurj* on the southeast corner.

9. The architect also explained that the plenum space under the newly cast reinforced concrete slab would be used for mechanical and electrical services, and so internally, the final finished level of the false ceiling would match the original.

10. The promoters reiterated their desire to create a landmark building by maintaining the authentic "look" of the building, as only that strategy would ensure the commercial viability to this project.

Technical evaluation

11. The undersigned examined all technical aspects of the work in progress and found that they were in order. The architect was familiar with the issues of restoration and was sensitively adding to the structural stability of the building while ensuring that its "looks" did not change. These changes to the original fabric were duly evaluated and found to be in conformity with acceptable practices.

12. It was also noted that the approved plans were indeed being followed, and that there did not appear to be any serious infringement of the footprint or volume of the building as sanctioned.

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13. The progress of the work will still have to be periodically monitored to ensure that the details and finishes that are subsequently undertaken continue to conform to the best practices for developing heritage properties.

14. Based on the above observations, the undersigned has no objection to permitting the construction of the project to continue as sanctioned.

Discussion with Kautilya Society

15. The undersigned and Dr. Kalyan Krishna also met the General Secretary Ms. Vrinda Dar, of the Kautilya Society and discussed at length her critical observations on the restoration work being carried out at the Darbhanga Palace.

16. There appeared to be two major concerns expressed by Ms. Dar. First, based on photographs she had taken of the west elevation of the building, she had concluded that the promoters were extending the footprint of the building. Second, she pointed out that the replacement of masonry walls with concrete framed structure was unnecessary and against the principles of conservation as practiced in Europe.

17. As regards the first observation, the plans of the original and proposed construction as sanctioned were shown to her to clarify that the building was following sanctioned plans, and was not exceeding the original footprint of the building. As regards her second observation, the undersigned explained the concept of restoration for reuse of heritage buildings wherein reconstruction of structurally unstable elements was permitted all over the world.

18. The undersigned was however, very impressed by the commitment and concern for protecting the heritage of Varanasi displayed by Ms. Dar and the Kautilya Society. She explained the objectives of the Society, which was to foster greater exchange between foreign and Indian scholars and scholarship. Both Dr. Kalyan Krishna and the undersigned discussed several areas of mutual interest between INTACH and Kautilya Society, which could be developed in future.

A G Krishna Menon

New Delhi, August 27, 2001

Restoration of Darbhanga Palace, Varanasi

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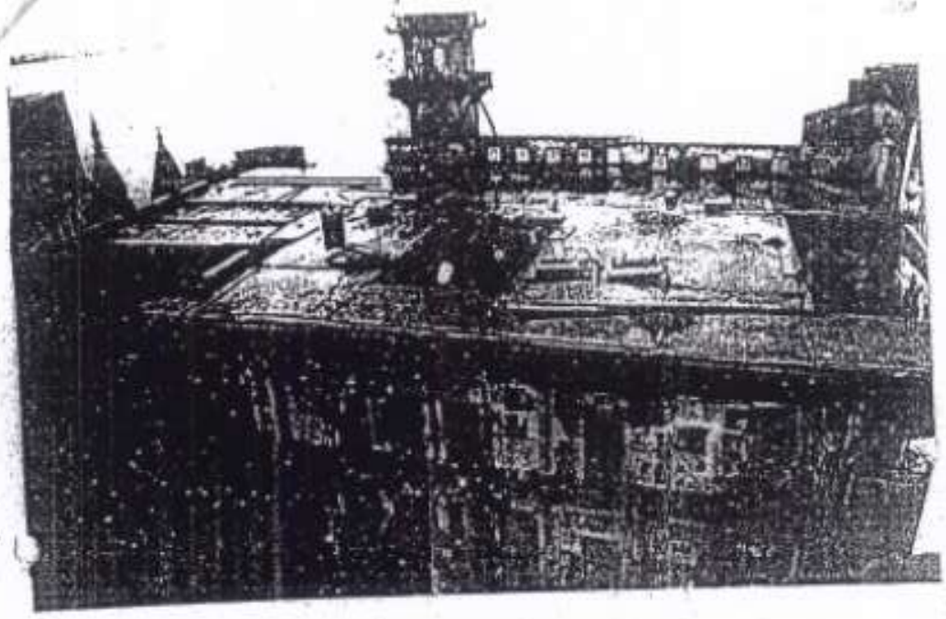
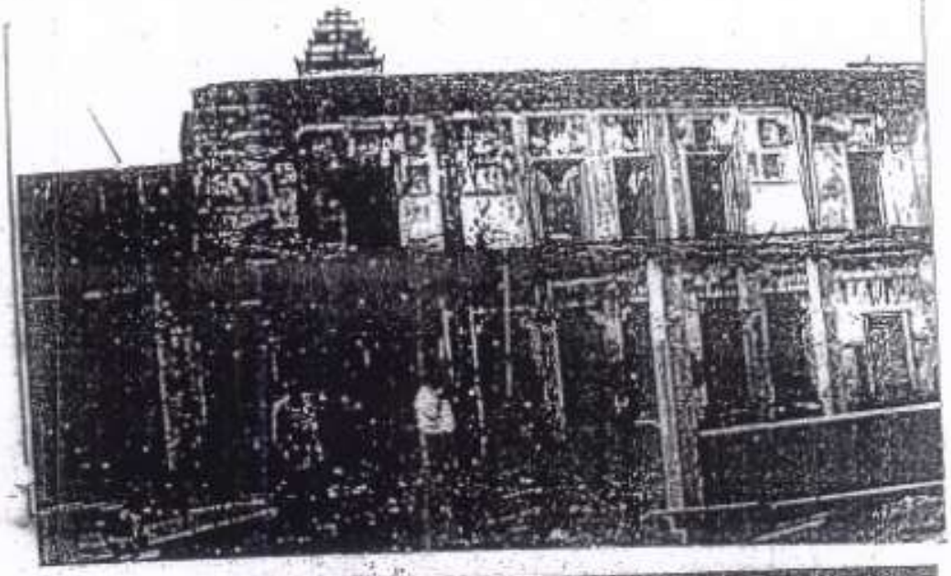
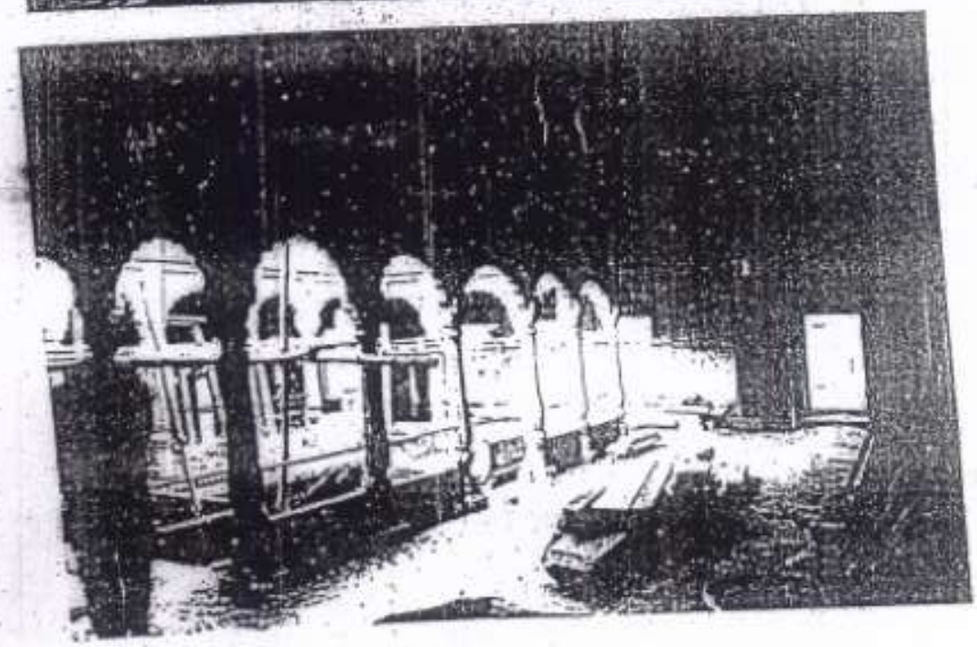


Overview from West of construction in progress as on 23.08.2001



View of Western portion of buildin which had to be pulled down and rebuilt on consideration of structural safety. This view is not visible to the pul but will be reconstructed to match the origin



Typical internal space after casti new roof slab. T plenum space w be used for serv and the origina ceiling level w restored.

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Fourth Report of INTACH dated 10-12-2002 alongwith covering letter dated 8-1-2003 with following observations:-

.....

7. All the evidence examined so far indicates that the promoters are intent on pursuing the instructions of INTACH and well-established restoration and reuse policy. They propose to retain the original character of the building within the constraints of putting it into use as a high quality hotel. However, the undersigned once again impressed on them the absolute necessity to maintain the external architectural character of the building, and all the evidence available so far indicates that the project architect and the promoters have understood this imperative, and intend to do so.

8. In view of the above, I recommend that INTACH should have no objection to the nature of work being undertaken for the restoration of the Darbhanga Palace at Varanasi by the promoters M/s Great Value Hotels Limited. Their intervention will contribute to the conservation of this important architectural heritage of the ghats of Varanasi, and inter alia, keep it in public use.

N T A

Indian National Trust
for Art and Cultural Heritage

2002/20

Dr. O.P. Agrawal
DG, ICCI

January 8, 2003

Shri R. Vikram Singh
Secretary-
Varanasi Development Authority
Varanasi

Sub: Restoration of the Dharbanga Palace at Varanasi Ghat

Ref: Your letter No. 4/96-Hotel -dated 22.11.2002

Dear Sir,

I am to refer to your letter No. 4/96-Hotel dated 22.11.2002 regarding the restoration work of the Dharbanga Palace at Varanasi by M/s Great Value Hotels Limited. On receipt of your letter Prof. A.G.K. Menon, a well known Conservation Architect and expert had been requested to visit the place once again and to submit a report on the present condition of the restoration work. I am enclosing a copy of the report submitted by Prof. Menon on 10th December, 2002 after inspecting the work being carried out at the Dharbanga Palace alongwith some photographs of the construction. As you will find from the report Prof. Menon has stated that the promoters are trying to retain the original character of the building and are pursuing well established restoration and re-use policy. He has, therefore, recommended that INTACH should have no objection to the nature of restoration work being done at the Dharbanga Palace by M/s Great Value Hotels Ltd.

Prof. Menon's report has been considered by the Coordination Committee of this organisation at its meeting held on 7.1.2003 and the Committee has felt that no interference by INTACH is called for and the restoration work should be allowed to be continued in the light of the promise made by the promoters namely, M/s Great Value Hotels Ltd. to retain the original character of the heritage structure as per the enclosed drawings.

INTACH
71, Lodhi Estate, New Delhi-110 003
Phone : 2463 1818, 2463 2267, 2463 2269, 2469 2774, 2464 1304, 2464 5482
Fax : 91-11-2461 1290 E-mail : intach@del3.vsnl.net.in Website : www.intach.net
Chairman : Capt. Amarinder Singh • Vice-Chairman : S. K. Misra

L N T A C H

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Two copies of the plans and drawings sent with your aforementioned letter are returned herewith duly approved and stamped by this organisation.

Thanking you,

Yours faithfully,

OP Agrawal

(O.P. Agrawal)

Enc: As above

A G KRISHNA MENON
ARCHITECTURE, URBAN PLANNING & CONSERVATION CONSULTANTS
N-84, PANCHSHILA PARK, NEW DELHI - 110 017
PHONE : (011) 649 0843 Tele/Fax : (011) 649 6597
E-Mail: rttumen@nda.vsnl.net.in

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December 10, 2002
Ref.: ND/412/613

Re.: *Report on Restoration Work at Darbhanga Palace, Varanasi by M/s Great Value Hotels Limited*

1. The plans for the reuse of Darbhanga Palace, Varanasi were discussed in detail with the promoters M/s Great Value Hotels Limited and their architect in Varanasi, before it was approved on 8.4.1996
2. Subsequently, there was an objection filed with the Varanasi Development Authority that the work was violating the principles of conservation. At the request of Dr. Kalyan Krishna, Convenor of INTACH's Varanasi chapter, and INTACH Central office, the undersigned carried out an inspection on August 22/23, 2001, of the restoration work being carried out at the site. The report was submitted to INTACH Central office vide letter dated August 28, 2001. A copy of the report is enclosed for ready reference.
3. Recently, Shri Mahendra Shah of M/s Great Value Hotels Limited contacted the undersigned and informed that the Varanasi Development Authority had again requested INTACH Central office to furnish a fresh inspection report on the restoration work. This report has been duly persuade at the request of INTACH Central office.
4. In this connection the undersigned once again visited the site along with the promoters on November 30, 2002 to personally assess the status of the work. The promoters, their new architect, Shri Kishan Kapur and site supervisor Shri Sachin were also present.
5. It was noted that the work was at a complete stand still from the time of the previous inspection. No further work had taken place in the mean time, so the original inspection report is still valid.
6. Since the strategy to use new materials for reconstruction is in question, old photographs taken before the restoration work started are being submitted with this report to explain why such a decision had been approved earlier. The original sanction given by INTACH on 8.4.1996 was based on this evidence. The photographs make it amply clear that the recommendation to reconstruct using contemporary structural material was absolutely necessary to ensure the structural safety of the renovated building which would be put to public use.

A G K M (2)

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7. All the evidence examined so far indicates that the promoters are intent on pursueing the instructions of INTACH and well-established restoration and reuse policy. They propose to retain the original character of the building within the constraints of putting it into use as a high quality hotel. However, the undersigned once again impressed on them the absolute necessity to maintain the external architectural character of the building, and all the evidence available so far indicates that the project architect and the promoters have understood this imperative, and intend to do so.

8. In view of the above, I recommend that INTACH should have no objection to the nature of work being undertaken for the restoration of the Darbhanga Palace at Varanasi by the promoters M/s Great Value Hotels Limited. Their intervention will contribute to the conservation of this important architectural heritage of the ghats of Varanasi, and *inter alia*, keep it in public use.

A G Krishna Menon

(3)

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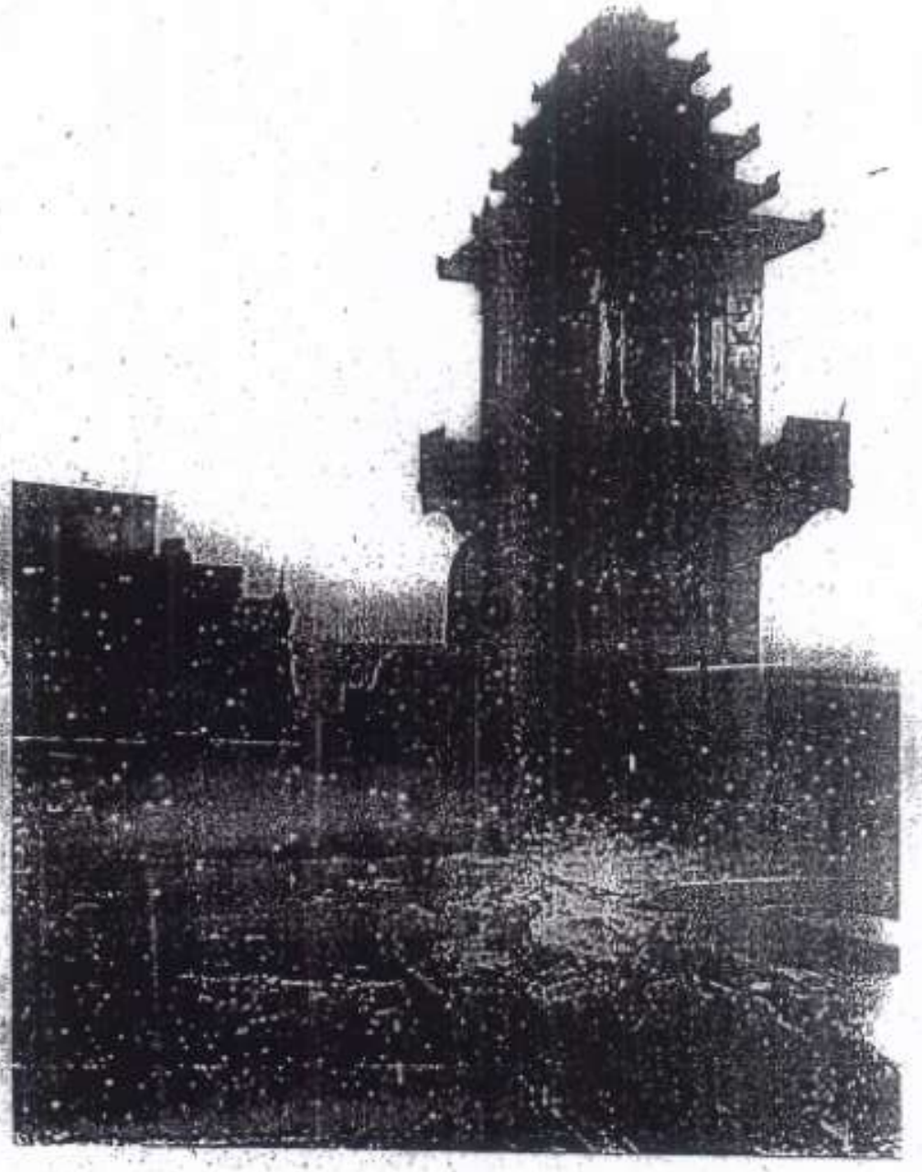

WHILE THE INTERNAL PART OF THE BUILDING WAS UNUSABLE, THE EXTERNAL CHARACTER OF THE BUILDING WAS REASONABLY INTACT AND COULD BE PRESERVED.

(4)

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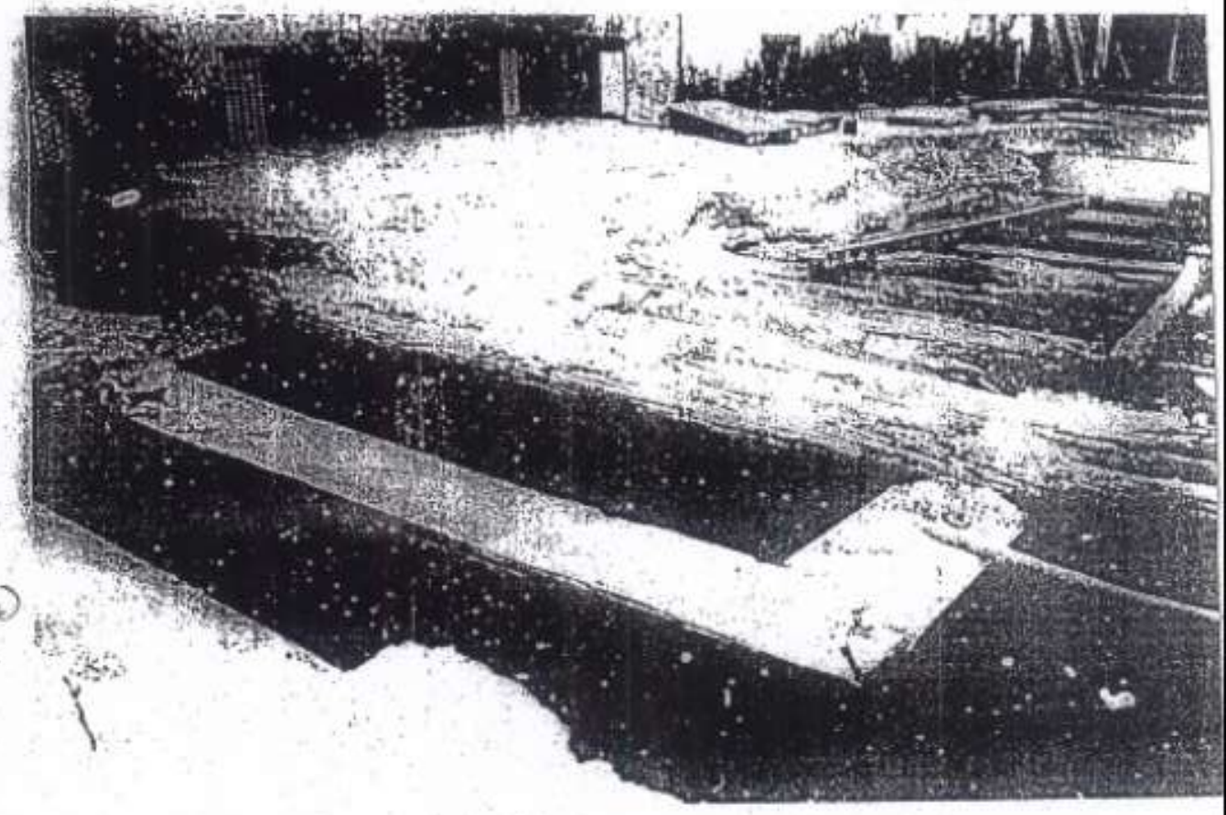

THE INTERNAL FLOORS AS CAN BE SEEN ARE QUITE DEEP. IT WOULD BE ENVIRONMENTALLY WRONG TO REPLACE THE WOOD THAT WAS USED TO SUPPORT THE FLOORS. SO IT WAS PRAGMATIC TO CONSTRUCT THEM OUT OF MODERN MATERIALS AND USE THE SPACE THAT IS SAVED IN BETWEEN THE ORIGINAL FLOOR AND CEILING TO CONCEAL THE SERVICES REQUIRED FOR THE HOTEL. THE INTERNAL FEATURES OF THE RECONSTRUCTED FLOOR AND CEILING SHOULD MATCH THE ORIGINAL.

(5) 170

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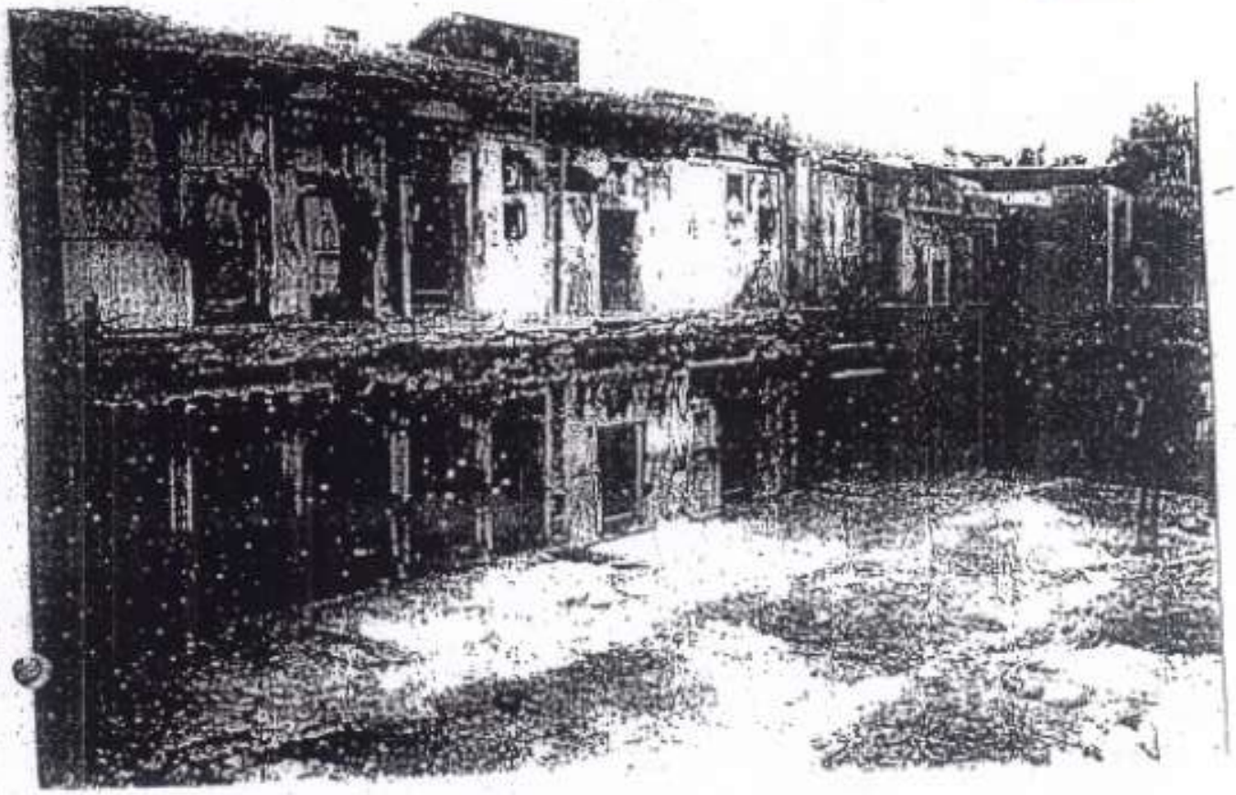

CONSIDERABLE EFFORT WAS MADE TO EXAMINE THE EVIDENCE OF THE ORIGINAL FOOT PRINT OF THE BUILDING IN THE REAR. THIS PORTION WAS BADLY DAMAGED AND MANY PORTIONS WERE MISSING. HOWEVER BY STUDYING THE OLD PLANS AND THE CLUES PROVIDED BY THE IMPRESSION OF THE MISSING STRUCTURE ON EXISTING WALLS IT WAS POSSIBLE TO DETERMINE ITS EXTENT, WHICH ENABLED US TO APPROVE THE PLAN IN 1996.

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Fifth Report of INTACH dated 30-6-2003/1.7.2003

Preamble

1.....

2.....

3.....

4. The Architect Shri Rishab Jain confirmed that the construction work was progressing in conformity with the sanctioned plans of the Varanasi Development Authority. Hence this inspection report focuses on the issues of conservation presently being followed by the promoters. Protecting the historic ambience of the Ghats of Varanasi was in any case the main objective of INTACH overseeing the development of this project.

Status of Project

5. About 80% of the structural work appears to have been completed so far, and simultaneously some internal and external finishing work had commenced.

6. Though the work was at a standstill, a lot of carved stone piece and some cladding stone were seen at site awaiting installation. These were very good quality stone balcony railings, columns, friezes etc. which were matching the existing elements. Orders placed on craftsmen in Rajasthan for additional elements requiring stone carving were also shown. Hence it appeared that a substantial amount of carved stone elements had already been ordered for the project and were being manufactured and installed by traditional craftsmen.

7. Work on one of the bhurj's which had collapsed earlier, was inspected. It has been partly erected, but no actual work was seen in progress. The quality of work was good. (See Annexure 4).

8. Unlike earlier vists, most of the debris from the ruined/collapsed floor and roof had been removed. Since the structural work was substantially completed, the skeletal spaces within the building and its outside form could be seen and understood. This gave a fair opportunity to walk within and outside the building to arrive at tentative judgements on the final delineation of the restored building.

Technical Evaluation

9. i. At the outset it needs to be clarified that this restoration work hasbeen undertaken as an adaptive reuse project. There are only two legally protected monuments on the ghats- the Man Mandir and Aurangzeb's mosque.

ii. .....

iii. Hence it was mooted by INTACH that developers should be encouraged to undertake adaptive reuse of historic structures. This would enable the

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ambience of the ghats to be retained while bringing the building to life to meet contemporary needs.

iv. As a model project, INTACH rstored the Peshwa's Palace at Raja Ghat. This is being used as a tourist cultural centre.

v. .....In the case of Darbhanga Palace, it was agreed that additional rooms could be built in the rear to make the project financially viable. This is a perfectly legitimate strategy to obtain the larger objective of retaining the historic ambience of the ghats though contemporary intervention.

vi. In any case it has been recognized by INTACH that change is inevitable. In fact, the ghats are undergoing constant transformation. By listing important buildings along the ghats, INTACH identified important (but unprotected) buildings that should be retained to conserve the historic ambience of the ghats. In these circumstances, it is not possible to freeze the entire building in time as can be attempted in the case of ASI protected buildings. The mot effective strategy is to bring or keep the listed buildings in sustainable public use. It was initially recognized that this objective would be achieved by converting the Darbhanga Palace into a hotel.

..... There seemed to be commendable effort to recreate the features of ... architectu... ..here it had collapsed and introduce some new details where necessary. It was noted that the promoters had tried to retain what existed as far as possible.

11.....

12. The wood beams are proposed to be made of boxed board and not actual timber. This is an acceptable substitution because it is environmental wrong to use wood beams whose use has been banned by the Government in any case. Hence the simulation is an acceptable and correct procedure under the circumstances.

13. The external cladding work that had been started in the rear was carefully inspected. It was in conformity to the standard stone bonding pattern used in Varanasi. With this type of stone cladding, the new rear elevation would blend with the rest of the old building.

14. To examine the river-side elevation of the building, the view from the river was carefully studied by going out into the river on a boat. This also gave a good panaromic view of the setting of the building on the Ghats. It was noted that the original symmetry of the façade would emerge with the competition of the construction of the new bhurj. The new construction in the rear did not disturb the view from the river. The whole appeared harmonious with the historical ambience along the Ghats. This was the main original intent when the project was sanctioned and it appears that this is being achieved.

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15. Further, three specific issues are being addressed in this evaluation:

i. The new construction in the rear is acceptable as seen from all points of view discussed above. It is in accordance with sanctioned plans, and it will be faced with the traditional chunar stone masonry to blend harmoniously with the traditional monumental architecture of Varanasi. This is an acceptable way of extending a building.

ii. The internal changes are in keeping with international practices to up grade old buildings and introduce new living standards. In many East German buildings for example, after unification of Germany, the old historic buildings were virtually rebuilt from inside to meet the higher standards Germany wanted for all its public buildings, including the historic buildings of the former East Germany.

iii. Great care has been taken to retain the old style of the façade so that the historic ambience of the Ghats will not be changed when the new building is completed. The new bhurj will complete the original symmetry of the façade which was lost when it collapsed. Even the rear elevation will appear to blend with the whole.

Concluding Comments on the nature of complaints made against the project.

17. .....

i. This is not a legally protected building. Hence standards applied to conserve ASI protected building cannot be applied.

ii. .....

iii. Private building of historic value cannot be conserved without some new types of intervention or use. This will inevitable compromise some of its historic value-because there is need to change the original use. However, in this process the buildings original role in its contribution to the historical fabric of the Ghats could be maintained to a large extent. If such flexibility is not permitted, the buildings will allowed to collapse, and the rebuilt in the modern style. This has been the experience all over India.

iv. .....

v. .....

18. .....It is therefore commendable that in this project the promoters are introducing change while keeping the character of the Ghats intact.

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CONCLUSIONS ON FIRST AND SECOND PAGE

It appears to be a prima facie misrepresentation of the context within which the restoration works on this building were initially approved and subsequently monitored. This is not a legally protected building. It was in fact slowly collapsing (like many other historic buildings on the ghats) due to neglect. Under these circumstances, when M/s Great Value Hotels Ltd. approached INTACH in 1996 with a proposal to re-use this building as a heritage hotel, we agreed and laid out certain conditions, most importantly that the ambience of he ghats should not be compromised on account of the construction required for the adaptive re-use of the building. It was agreed that new construction could be undertaken in the rear (where a section had completely collapsed), and accordingly plans were prepared for the approval of the Varanasi Development Authority as per their building bye-laws. The construction work is following the sanctioned plan.

The promoters have adhered to the conditions laid down by INTACH as per my earlier and present report. They are employing traditional stone masons to replicate decorative elements and are cladding the new construction at the rear part of the building in the typical manner of historic building in Varanasi.

It may be noted in this regard that it would be in the interest of the promoters to maintain the heritage value of the property. Thus the allegations of "destruction" of heritage is based on a wrong expectations of how this building is to be conserved. This building cannot be treated like the ASI protected Man Mandir and Aurengzeb's mosque. Adaptive re-use will necessarily involve introduction of modern services and amenities. It will involve reconstruction and not the preservation of what existed. However, it is being ensured that the ghat ambience is not disturbed in the process.

I N T A C H

Indian National Trust
for Art and Cultural Heritage

No.F. VAR/23

July 2,2003

Dear Dr Kalyan

A copy of the Report on Darbhanga Palace sent to Shri B. Ram, Chairman VDA, Varanasi, is enclosed for your information

Regards,

Maj.Gen.(Retd.)LK Gupta,, AVSM
Chapter Division

Dr Kalyan Krishna
Sita Niwas
Baranas Hindu University
Varanasi 221 005

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Chairman : Capt. Amarinder Singh • Vice-Chairman : S. K. Misra

I N T A C H

Indian National Trust
for Art and Cultural Heritage

Divay Gupta
Director Programme
Architectural Heritage Division

Ref:- F5-64-INTACH

Date:- 01.07.03

Sub:- Rennovation of Darbhanga Palace, Varanasi

Dear Mr. Ram,

This in continuation of my letter dtd. 29.05.03 in response to your letter dtd. 22.05.03 regarding the above subject. I am enclosing the inspection report on Darbhanga Palace, Varanasi undertaken by our expert Prof. A.G.K. Menon.

The enclose report is self explanatory.

Please feel free to contact me for further information / clarification on the above subject.

Regards,

Divay gupta

Mr. B. Ram – Chairman,
Varanasi Development Authority (VDA)
Varanasi

cc for Sapta for info & further action with chapters.

2/July 03.

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A G KRISHNA MENON
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July 1, 2003
Ref.: ND/412/688

Vice Chairman
INTACH
71, Lodi Estate
New Delhi - 110 003

Kind Attn.: Shri Divya Gupta

Dear Sir,

Re.: *Darbhanga Palace, Varanasi*

This has reference to the enquiry of the Varanasi Development Authority regarding the restoration works being carried out in the Darbhanga Palace, Varananasi, under the guidance of INTACH.

In this regard, INTACH had initially approved the scheme on April 8, 1996, and inspected the progress of work vide reports dated August 28, 2001 and December 10, 2002. The background of the current enquiry is also newspaper reports alleging destruction of valuable architectural heritage. The copies of the newspaper reports are included in my report.

There appears to be a *prima facie* misrepresentation of the context within which the restoration works on this building were initially approved and subsequently monitored. This is not a legally protected building. It was in fact slowly collapsing (like many other historic buildings on the ghats) due to neglect. Under these circumstances, when M/s Great Value Hotels Ltd approached INTACH in 1996 with a proposal to re-use this building as a heritage hotel, we agreed and laid out certain conditions, most importantly that the ambience of the ghats should not be compromised on account of the construction required for the adaptive re-use of the building. It was agreed that new construction could be undertaken in the rear (where a section had completely collapsed), and accordingly plans were prepared for the approval of the Varanasi Development Authority as per their building bye-laws. The construction work is following the sanctioned plan.

A G K M

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The promoters have adhered to the conditions laid down by INTACH as per my earlier and present report. They are employing traditional stone masons to replicate decorative elements and are cladding the new construction at the rear part of the building in the typical manner of historic buildings in Varanasi.

It may be noted in this regard that it would be in the interest of the promoters to maintain the heritage value of the properly. Thus the allegations of "destruction" of heritage is based on a wrong expectations of how this building is to be conserved. This building cannot be treated like the ASI protected Man Mandir and Aurengzeb's mosque. Adaptive re-use will necessarily involve introduction of modern services and amenities. It will involve reconstruction and not the preservation of what existed. However, it is being ensured that the ghat ambience is not disturbed in the process.

As the works are at a standstill, the promoters had requested that INTACH could duly endorse this report for onward transmission to the Varanasi Development Authority at the earliest. I hope you will be able to do this.

Best regards

Yours sincerely

A G Krishna Menon

Copy to : ***Dr. Kalyan Krishna**, Convenor,*
INTACH,
Varanasi, Sita Niwas,
Banaras Hindu University,
Varanasi -221 005 - with copy of report

1/7/13

A G KRISHNA MENON
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June 30, 2003
Ref.: ND/412/684

DARBHANGA PALACE, VARANASI

Preamble

1. The convenor of INTACH's Varanasi Chapter Shri Kalyan Krishna, informed the undersigned that certain clarifications were sought by the Varanasi Development Authority regarding the work in progress at Darbhanga Palace, Varanasi being developed by M/s Great Value Hotels Limited. The undersigned therefore, inspected the site on June 26, 2003. Information about the visit was duly conveyed to Varanasi Development Authority by the Architect Shri Rishab Chandra Jain.

2. The inspection was carried out in the presence of Shri Kamal Agarwal, representative of M/s Great Value Hotels Limited, Shri Rishab Chandra Jain, Architect, and Shri Kalyan Krishna, Convenor, INTACH Varanasi Chapter.

3. This inspection report examines the adherence by the developers of the project to the context established during the approval of the drawings by INTACH on April 8, 1996, and the periodic inspection reports of work in progress submitted by the undersigned dated August 28, 2001 and December 10, 2002. In this connection reference is also made to newspaper reports alleging the "destruction" of heritage by the developers of this project. (Annexure 1 & 2)

4. The Architect Shri Rishab Jain confirmed that the construction work was progressing in conformity with the sanctioned plans of the Varanasi Development Authority. Hence this inspection report focuses on the issues of conservation practices being followed by the promoters. Protecting the historic ambience of the Ghats of Varanasi was in any case the main objective of INTACH overseeing the development of this project.

Status of Project

5. About 80% of the structural work appears to have been completed so far, and simultaneously some internal and external finishing work had commenced. The work was however, at a standstill on the day of the inspection on the instruction of the Varanasi Development Authority, pending clarification to points raised in complaints filed against the conservation procedure adopted for project.

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6. Though the work was at a standstill, a lot of carved stone piece and some cladding stone were seen at site awaiting installation. These were very good quality stone balcony railings, columns, friezes etc., which were matching the existing elements. Orders placed on craftsmen in Rajasthan for additional elements requiring stone carving were also shown. Hence it appeared that a substantial amount of carved stone elements had already been ordered for the project and were being manufactured and installed by traditional craftsmen.
7. Work on one of the *bhurj's* which had collapsed earlier, was inspected. It has been partly erected, but no actual work was seen in progress. The quality of work was good. (See Annexure 4)
8. Unlike earlier visits, most of the debris from the ruined/collapsed floors and roof had been removed. Since the structural work was substantially completed, the skeletal spaces within the building and its outside form could be seen and understood. This gave a fair opportunity to walk within and outside the building to arrive at tentative judgements on the final delineation of the restored building.

Technical Evaluation

9. i. At the outset it needs to be clarified that this restoration work has been undertaken as an adaptive reuse project. There are only two legally protected monuments on the ghats - the Man Mandir and Aurangzeb's mosque.

   ii. It was noted that in the absence of legal instruments to preserve historic buildings, unsympathetic changes were taking place all along the ghats. The original users were often not in a position to maintain their historic property.

   iii. Hence it was mooted by INTACH that developers should be encouraged to undertake adaptive reuse of historic structures. This would enable the ambience of the ghats to be retained while bringing the building to life to meet contemporary needs.

   iv. As a model project, INTACH restored the Peshwa's Palace at Raja Ghat. This is being used as a tourist cultural centre.

   v. This process requires assessment of the needs of contemporary functions and their sensitive accommodation within the fabric of the building. In the case of the Darbhanga Palace, it was agreed that additional rooms could be built in the rear to make the project financially viable. This is a perfectly legitimate strategy to obtain the larger objective of retaining the historic ambience of the ghats though contemporary intervention.

vi. In any case it has been recognised by INTACH, that change is inevitable. In fact, the ghats are undergoing constant transformation. By listing important buildings along the ghats, INTACH identified important (but unprotected) buildings that should be retained to conserve the historic ambience of the ghats. In these circumstances, it is not possible to freeze the entire building in time as can be attempted in the case of ASI protected buildings. The most effective strategy is to bring or keep the listed buildings in sustainable public use. It was initially recognised that this objective would be achieved by converting the Darbhanga Palace into a hotel.

10. The works inspected were in accordance to earlier discussions/ instructions and expectations. There seemed to be commendable effort to recreate the features of the old architecture where it had collapsed, and introduce some new details where necessary. It was noted that the promoters had tried to retain what existed as far as possible. (See Annexure 4, 5, 6 & 7)

11. The two-feet thick earthfilled flooring had been replaced by r.c.c. slab as originally proposed. This has created adequate plenum space for air conditioning fan-coil units and ducts. The false ceiling it was understood, would maintain the earlier room height and reproduce the looks of the wooden beams. (See Annexure 6)

12. The wood beams are proposed to be made of boxed board and not actual timber. This is an acceptable substitution because it is environmental wrong to use wood beams whose use has been banned by the Government in any case. Hence the simulation is an acceptable and correct procedure under the circumstances.

13. The external cladding work that had been started in the rear was carefully inspected. It was in conformity to the standard stone bonding pattern used in Varanasi. With this type of stone cladding, the new rear elevation would blend with the rest of the old building. (See Annexure 7)

14. To examine the river-side elevation of the building, the view from the river was carefully studied by going out into the river on a boat. This also gave a good panaromic view of the setting of the building on the Ghats. It was noted that the original symmetry of the facade would emerge with the completion of the construction of the new *bhurj*. The new construction in the rear did not disturb the view from the river. The whole appeared harmonious with the historical ambience along the Ghats. This was the main original intent when the project was sanctioned and it appears that this is being achieved. (See Annexure 3)

15. Further, three specific issues are being addressed in this evaluation :
    i. The new construction in the rear is acceptable as seen from all points of view discussed above. It is in accordance with sanctioned plans, and it will be faced with the traditional chunar stone masonry to blend harmoniously with the traditional monumental architecture of Varanasi. This is an acceptable way of extending a building.
    ii. The internal changes are in keeping with international practices to up grade old buildings and introduce new living standards. In many East German buildings for example, after unification of Germany, the old historic buildings were virtually rebuilt from inside to meet the higher standards Germany wanted for all its public buildings, including the historic buildings of the former East Germany.
    iii. Great care has been taken to retain the old style of the facade so that the historic ambience of the Ghats will not be changed when the new building is completed. The new *bhurj* will complete the original symmetry of the facade which was lost when it collapsed. Even the rear elevation will appear to blend with the whole.
16. The project is proceeding in the spirit and expectation with which INTACH had initially approved this Heritage Hotel project in 1996.

Concluding Comments on the nature of complaints made against the project

17. It had been pointed out in the earlier reports that the context of the project must be taken into account while examining the type of intervention in historical buildings. The critical issues defining the context in this project are being reitterated as follows :
    i. This is not a legally protected building. Hence standards applied to conserve ASI protected buildings cannot be applied.
    ii. The Varanasi Development Authority and INTACH would nevertheless like to maintain the historic ambience of the Ghats. Hence the process to achieve these ends is to *encourage* developers of old properties to maintain the external ambience of the building and recreate the interior features as far as possible for sustainable maintenance. (See Annexure 7)
    iii. Private buildings of historic value cannot be conserved without some new types of intervention or use. This will inevitable compromise some of its historic value - because there is need to change the original use. However, in this process the buildings original role in its contribution to the historical fabric of the Ghats could be maintained to a large extent. If such flexibility is not permitted, the buildings will allowed to collapse, and the rebuilt in the modern style. This has been the experience all over India.

iv. The best way to achieve conservation in these circumstances is through adaptive reuse. This process permits changes to the extent to make the building functionally and economically viable on the one hand, but on the other, not compromise the external ambience of the building so that its meaning is lost. Hence, the principle is that in the case of legally non-protected buildings, its overall character is more important than its academic historicity.

v. It must also be noted that it is in the interest of the promoters to maintain the historical character of the building as it is their main selling point. Hence, the larger interest of the Varanasi Development Authority and INTACH and the interests of the Promoter converge in this project. This should be encouraged.

18. It is in keeping with the above context that the works inspected appear to be progressing satisfactorily. There are many other changes that are taking place in the surrounding area which are merely responding to the forces of development. In a place like India, and Varanasi, development cannot be frozen. It is therefore commendable that in this project the promoters are introducing change while keeping the character of the Ghats intact.

19. On the above grounds, the work is satisfactory, and should be allowed to proceed.

20. Periodic inspection will however, have to continue to be carried out to ensure that the project continues to operate within the acceptable norms already identified.

A G Krishna Menon

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Annexure -1

TOI, New Delhi
June 22, 2003

D I A

A Taj affair in Varanasi

TIMES NEWS NETWORK

Varanasi: The Taj Mahal is not alone. Here's a perfect tale of harnessing the tourist potential of the city by destroying its historical treasure.

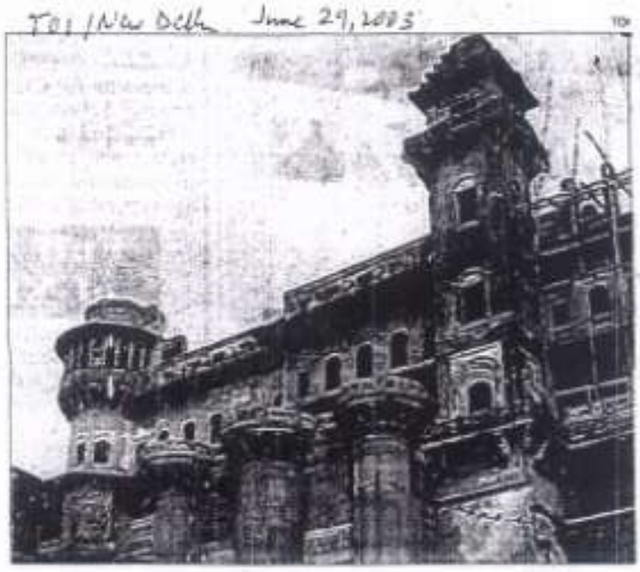
A major portion of the 200-year-old Darbhanga Palace, situated adjacent to Munahi ghat on the riverfront has been demolished for commercial purpose and construction work for building a five star hotel is on.

According to Vrinda Dar, the general secretary of the Kautilya Society, an NGO promoting Indian culture abroad, the palace owned by the Darbhanga estate was sold to a hotel group of the country in 1995-96.

105

Annexure -2

TOI / New Delhi June 29, 2003



Messing up a majestic mahal

A major portion of the two centuries old Darbhanga Palace, situated on the Munshi ghat along the Ganga in Varanasi is being demolished for commercial purposes. Construction work for building a five star hotel is in full swing. According to Vrinda Dar, the general secretary of Kautilya Society, an NGO engaged in the promotion of Indian culture abroad, the palace owned by the Darbhanga estate was sold to a prominent hotel group of the country in 1995-96.

Dar says that the palace was classified as a Grade I building in 1992 by INTACH. This meant that the monument's originality had to protected at every cost. A plan of renovation produced by the new owners of the palace was approved by the Varanasi Development Authority (VDA) in 1997 on the condition that the proposed alterations did not change the original structure, damage the sacredness of the river or disrupt the harmony of the surrounding structures. The approval of this plan was valid for three years.

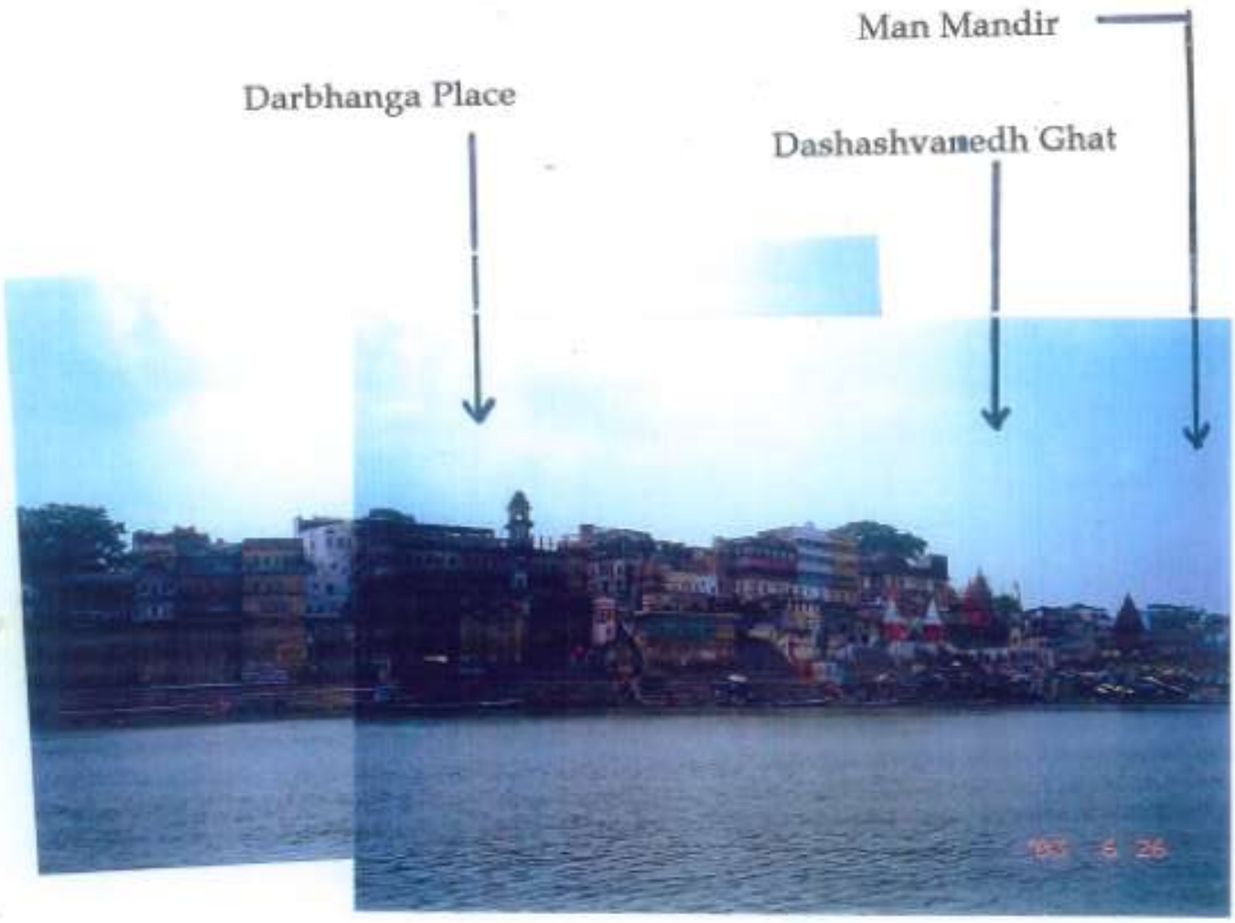
In April 2000 VDA refused to renew the approval as the same year the state government had issued an order prohibiting any construction within 200 metres of the Ganga. Still, demolition began in December 2000 and expansion work started in February 2001 with the laying down of new foundations for substantially extending the boundaries of the old structure. The VDA blocked work in March 2001 but reconsidered its decision in March 2003. Currently, new construction work and expansion is on inside the monument and a new structure of five floors is coming up inside.

B Ram, vice-chairman of VDA said there was nothing wrong as no construction work was going on. Only repair work was taking place and that too within the supervision of INTACH. Besides the repair plan had been approved by the VDA, much before the state government order of 2000 that prohibits any construction within 200 metres of the river. When informed of the ground reality, he said he was going to check the entire matter.

Anuraag

186

Annexure -3



Panoramic view from the river showing relationship between Darbhanga Palace and Man Mandir

1017

Annexure -4

Reconstruction of the missing *bhurj* seen from the terrace. The work involves using traditional craftsmen and carved stone elements.

View of the reconstruction of the *bhurj* from the ghats.

View from the river showing the symmetrical relationship of two *bhurjs* in relation to the river-side facade of the building.

Annexure -5

The old wooden beams were unusable. Given the prevailing environment crisis it would be wrong to replace them. Hence new materials have to be used.

Traditional stone craftsmanship is still available in India. These craftsmen get support when they are employed in the restoration of old buildings. These stone pieces reproduce old designs and are used to replace missing pieces.

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Annexure -6

Details of roof beam. Old wood beams have been replaced with steel girders which will be covered with wood board to replicate original beams.

The old roof which was over two feet thick had collapsed and has been replaced with concrete slab creating a plenum space for introducing air-conditioning ducts. The false ceiling will replicate the old ceiling.

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Annexure -7

External cladding of the reconstructed rear wall will be clad with traditional stone masonry to blend with the existing walls.

Reconstruction of internal stone work is using traditional stone craftsmen and material.

191

Sixth Report of INTACH dated 28-3-2012

records that:-

1. That no change in the Façade of the building facing to the river and it is at its original form.
   Left side Burji facing the river which had fallen down has been restored to its original shape.
2. That where ever walls had collapsed and/or needed strengthening or new construction have been rebuilt with stone cladding in order to give its original appearance.
3. That inside the building al stone carvings and restoration work have been done as per approved norms and instruction of INTACH for adoptive reuse of the building.

In totality restoration work carried out in Darbhanga Palce is to the satisfaction and norms of INTACH. It has set a model for restoring heritage building.

संलग्नक - क्र. - २ -

192 (12)

INTACH Varanasi Chapter, Sita Nivas, Banaras Hindu University
Varanasi 221 005 Phone: 9839042087

March 28. 2012

Vice Chairman,
Varanasi Vikas Pradhikaran
Varanasi

Sub.: Restoration work at Darbhanga Palace, House No. D/16,20/17 A,B,C, Munshi Ghat, Varanasi

Dear Sir,

On the request of the owners we have been regularly visiting Darbhanga Palce to monitor the restoration work. Since all the restoration work has been completed we made final inspection on March 25th, 2012 and are please to confirm following:

1. That no change in the Façade of the building facing to the river ~~has been restored~~ and it is at its original form.
   Left side Burji facing the river which had fallen down has been restored to its original shape.
   2.That where ever walls had collapsed and/or needed strengthening or new construction have been rebuilt with stone cladding in order to give its original appearance.
   3.That inside the building all stone carvings and restoration work have been done as per approved norms and instruction of INTACH for adoptive reuse of the building.

In totality restoration work carried out in Darbhanga Palace is to the satisfaction and norms of INTACH. It has set a model for restoring heritage building.

Thanking you,

Yours faithfully,
For INTACH Varanasi Chapter
Convenor

193 497

Report by Sri C.B. Srivastava, Former District Judge as Commissioner appointed by Hon'ble Court.

24.2.2011/21.3.11
1
Encl

Vide order of Hon'ble Court dated 24-2-2011 Shri C.B. Srivastava, Former District Judge, was appointed as Commissioner who personally inspected the site, ward wise, made inspection ward wise, submitted its report dated 21.3.2011 and nothing was found against law of the land in the building of answering respondents nos. 6 to 8 rather local people who were present at the time of inspection intimated Commissioner that residential house of the Kautilya Society is behind the building in question and that in the residential house of Kautilya Society there is a restaurant and foreigners stay there and due to restoration, conservation and renovation work of building of answering respondents, business of Kautilya Society is affected, as such petition has been filed in private interest in the garb of Public Interest Litigation vide orders dated 24.1.2011 and 21-3-2011 (Enclosed report excluding annexures).

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From,

C.B. Srivastava,
Former District Judge/
Commissioner appointed by the
Hon'ble Allahabad High Court.

To,

The Assistant Registrar (J),
Hon'ble High Court,
Allahabad.

Sub: Regarding compliance of Hon'ble Courts order dated 24.2.2011 passed in P.I.L. No.31229 of 2005 Kautilya Society & Anr. vs. State of U.P. & others.

Sir,

I have the honour to submit that in compliance to the Hon'ble High Court's order dated 24.2.2011 passed in the above noted case, I personally inspected the sites, ward-wise as given in the affidavit of the Varanasi Development Authority sworn in May, 2008.

At the time of inspection representatives of the petitioner Society and the officers of the Varanasi Development Authority were also present. During the inspection, I noticed that several unauthorised constructions have been demolished but some unauthorised constructions have not been demolished/fully demolished due to non-availability of police force, though letters were issued to the DIG, Varanasi to provide adequate police force for the demolition work.

In some matters stay orders have been granted by the Hon'ble Allahabad High Court and in some cases the stay orders have been granted by the Civil Commissioner's court.

During the visit, I also noticed the difficulties of the local public residing in the old private houses situated within 200 meters of the river bank's of the river Gangas, as they are not getting permission even to repair their houses in garb of the demolition of the aforesaid unauthorised constructions. In this regard a joint representation was presented by Kendriya Dev Dipawali Maha Samiti, Kashi, Gangotri Seva Samiti and Ganga Sewa Samiti, which is enclosed in original.

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(2)

A detailed ward-wise inspection report is enclosed herewith for kind perusal of the Hon'ble High Court.

You are, therefore, requested to place this report before the Hon'ble High Court for kind perusal and orders.

Submitted,

(C.B. Srivastava)
Commissioner appointed by
the Hon'ble Allahabad High court.

Dated 21.3.2011

Encls:

1- Inspection report regarding Adampur ward alongwith annexures.
2- Inspection report regarding Dashashvmegh ward alongwith annexures.
3- Inspection report regarding Bhelupur and Nagvan ward alongwith annexures.
4- Inspection report regarding Chowk & Kotwali ward alongwith annexures.
5-Attendence memo of inspections made on 10.3.2011, 14.3.2011, 15.3.2011 & 17.3.2011.
6- Cuttings of Newspapers.
7- Joint representation dated 17.3.2011 of Kendriya Dev Dipawali Mahu Samiti, Kashi, Gangotri Sewa Samiti and Ganga Sewa Samiti.

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सिविल मिसलेनियस रिट पिटीशन (पी0आई0एल0) संख्या–31229/05, कौटिल्या सोसाइटी व एक अन्य बनाम उ0प्र0 राज्य व अन्य में मा0 उच्च न्यायालय, इलाहाबाद के आदेश दिनांक 24–02–11 के अनुपालन में गंगा नदी से 200 मीटर के अन्दर अवैध निर्माण विषयक वाराणसी विकास प्राधिकरण द्वारा प्रस्तुत कार्य योजना के सन्दर्भ में दिनांक 14–03–11 को दशाश्वमेध वार्ड में स्थल निरीक्षण किया गया। स्थल निरीक्षण के समय कौटिल्या सोसाइटी/पिटीशनर की ओर से सर्वश्री देवाशीष एवं फास्तो तथा प्राधिकरण की ओर से श्री एस0सी0 मिश्रा, संयुक्त सचिव, श्री एन0पी0 श्रीवास्तव, विधि अधिकारी, श्री के0डी0 सिंह, अवर अभियन्ता और कतिपय अन्य प्राधिकरणकर्मी उपस्थित थे। प्रत्येक अवैध निर्माण के सम्बन्ध मे वास्तविक स्थिति निम्नवत् पाई गई:–

1– श्री अशोक कुमार त्रिपाठी पुत्र स्व0 रंजन तिवारी डी0 24/15, पाण्डेयघाट, संचिका संख्या–डी0 220/05(नो0)

जोनल अधिकारी द्वारा अवगत कराया गया कि विपक्षी द्वारा उक्त भवन में भूतल पर 30x35 फिट के माप में हाल का निर्माण किये जाने पर अधिनियम की धारा–27, 28 व 28(2) के अन्तर्गत दिनांक 08–03–2006 को नोटिस कार्यवाही करते हुये दिनांक 23–03–06 को ध्वस्तीकरण आदेश पारित किया गया। यह भी अवगत कराया गया कि प्रश्नगत अवैध निर्माण को गिराने हेतु दिनांक 17–02–2009, 18–02–2009, 20–02–2009 एवं 13–08–2009 को तिथि निर्धारित की गयी, किन्तु गंगा महोत्सव, देव दीपावली एवं छाता लक्खा का घेराव होने के कारण एवं अन्य अपरिहार्य कारणों से पुलिस बल प्राप्त न होने के कारण ध्वस्तीकरण की कार्यवाही नहीं की जा सकी। अवैध निर्माण स्थल को दिनांक 27–11–2008 को सील कर दिया गया। स्थल निरीक्षण में पाया गया कि मौके पर जी+2 तल का भवन अर्द्ध–निर्मित दशा में मौजूद है, भूतल पुराना प्रतीत होता है, जिसमे लखौरी ईंटे लगी हुयी पायी गयीं। स्थल यथावत सील पाया गया। कौटिल्या सोसाइटी के प्रतिनिधि द्वारा इस प्रकरण में आपत्ति की गयी और अवैध निर्माण को ध्वस्त किये जाने हेतु अनुरोध किया गया। विपक्षी द्वारा पुराना भवन होने विषयक संलग्न अभिलेख उपलब्ध कराये गये। निरीक्षण में काफी पुराना भवन होना सही पाया गया।

2– श्री शिवबाबू मुखर्जी/श्री अनुपम मुखर्जी पुत्र श्री के0डी0 मुखर्जी, भवन संख्या–डी0 24/20, पाण्डेयघाट, दशाश्वमेध, वाराणसी, संचिका संख्या–डी089/2000(नो0)

जोनल अधिकारी द्वारा अवगत कराया गया कि उक्त भवन में द्वितीय खण्ड पर कमरों हेतु दीवालों का अवैध निर्माण कराये जाने पर अधिनियम की धारा–27, 28 व 28(2) के अन्तर्गत दिनांक 12–10–2000 को कार्यवाही की गयी। यह भी अवगत कराया गया कि भवन निरीक्षक एवं सहायक अभियन्ता द्वारा दिनांक 16–03–2002 को पत्रावली पर यह आख्या प्रस्तुत की गयी कि जी+1 तल का निर्माण पूर्व का है एवं द्वितीय व तृतीय तल पर कमरों एवं सीढ़ी का निर्माण कार्य पूर्ण कर लिया गया है, जिसपर दिनांक 18–03–2002 को ध्वस्तीकरण आदेश पारित किया गया, जिसके क्रम में द्वितीय तल पर अवैध रूप से निर्मित निर्माण को दिनांक 10–09–2009 को गिरा दिया गया। स्थल निरीक्षण में यह पाया गया कि द्वितीय

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एवं तृतीय तल पर खिड़की तोड़कर हटा दी गयीं एवं अवैध निर्माण ध्वस्त कराया जाना पाया गया। कोटिल्या सोसाइटी के प्रतिनिधि द्वारा इस अवैध निर्माण पर आपत्ति उठाते हुये इसे पूर्ण रूप से ध्वस्त किये जाने हेतु अनुरोध किया गया। भवन स्वामी द्वारा अवगत कराया गया कि जितने नव निर्माण की नोटिस थी, उतना भाग गिराया जा चुका है।

3- श्री गोकुल शर्मा पुत्र पं0 देवकी नन्दन शास्त्री, डी021/12ए-1, राना महल, वाराणसी, संचिका संख्या-डी0123/03 (नो0)

जोनल अधिकारी द्वारा अवगत कराया गया कि उक्त भवन में गंगा नदी की तरफ भूतल पर दीवाल का निर्माण किये जाने पर अधिनियम की धारा-27, 28 व 28(2) के अन्तर्गत दिनांक 28-09-2003 को कार्यवाही करते हुये दिनांक 17-05-2006 को ध्वस्तीकरण आदेश पारित किया गया एवं दिनांक 28-11-2008 को सील की कार्यवाही की गयी, तदोपरान्त विपक्षी द्वारा दिनांक 04/10-12-2008 को उक्त दीवाल को स्वतः हटा लिया गया। स्थल निरीक्षण में उक्त दीवाल को ध्वस्त करा दिया जाना पाया गया।

4- श्रीमती रश्मि तिवारी पत्नी श्री अजय शंकर तिवारी एवं श्रीमती रत्ना तिवारी पत्नी श्री शिवशंकर तिवारी, डी016/28, मानमंदिर घाट, वाराणसी, संचिका संख्या-डी0 250 / 02 (नो0)एवं संचिका संख्या-डी0162/2001(नो0)

जोनल अधिकारी द्वारा अवगत कराया गया कि उक्त भवन में स्वीकृत मानचित्र के विपरीत जी+3 तल का अवैध निर्माण कराये जाने पर अधिनियम की सुसंगत धाराओं के अन्तर्गत कार्यवाही करते हुये दिनांक 21-03-2003 को ध्वस्तीकरण आदेश पारित किया गया। तत्पश्चात विपक्षी द्वारा चतुर्थ तल पर लगभग 18x14 फिट के माप में आर0सी0सी0 पिलर्स का निर्माण कराने पर अधिनियम की धारा-27, 28 व 28(2) के अन्तर्गत दिनांक 10-03-2005 को नोटिस की कार्यवाही करते हुये दिनांक 28-04-2005 को ध्वस्तीकरण आदेश पारित किया गया। प्रश्नगत प्रकरण में मा0 उच्च न्यायालय, इलाहाबाद द्वारा ध्वस्तीकरण कार्यवाही पर दिनांक 16-07-2003 को स्थगन आदेश पारित किया गया है। स्थगन आदेश की छाया प्रति संलग्न है।

5- श्री विनय कुमार चौधरी, भवन संख्या डी03/23, नीरघाट, वाराणसी

जोनल अधिकारी द्वारा अवगत कराया गया कि प्रश्नगत स्थल पर वर्तमान में जी+4 तल पर अलका गेस्ट हाउस का संचालन हो रहा है। प्रश्नगत प्रकरण में वाद संख्या-647/04 पर मा0 सिविल जज, सीनियर डिवीजन, वाराणसी द्वारा दिनांक 12-08-2004 को स्थगन आदेश पारित किया गया है, जो वर्तमान में प्रभावी है। प्राधिकरण के अधिवक्ता/स्टैंडिंग काउंसिल की रिपोर्ट दिनांक 09-03-2011 एवं प्रश्नोत्तरी की छाया प्रति संलग्न है, जिसके अनुसार सुनवाई हेतु तिथि 21-05-2011 नियत है।

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6- श्री बल्लर यादव पुत्र श्री साधोराम, डी03/28, मीरघाट, वाराणसी, संचिका संख्या -डी074/07 (मौ0)

जोनल अधिकारी द्वारा अवगत कराया गया कि उक्त भवन में विपक्षी द्वारा 28x25 फिट माप में दीवाल का अवैध निर्माण कराने पर अधिनियम की सुसंगत धाराओं के अन्तर्गत दिनांक 08-10-2007 को नोटिस कार्यवाही करते हुये दिनांक 29-10-2007 को ध्वस्तीकरण आदेश पारित किया गया एवं अवैध निर्माण स्थल को दिनांक 28-11-2008 को सील कर दिया गया। तदोपरान्त उक्त दीवाल को दिनांक 10-09-2009 को पुलिस बल की उपलब्धता में ध्वस्त करा दिया गया। स्थल निरीक्षण में उक्त दीवाल को ध्वस्त कराया जाना पाया गया।

7- श्री अपूर्व कुमार वगैरह डी020/17, मुंशीघाट, दरभंगा पैलेस, वाराणसी

जोनल अधिकारी द्वारा अवगत कराया गया कि प्रश्नगत भवन के परिवर्तन/ परिवर्द्धन का मानचित्र दिनांक 24-04-1997 को प्राधिकरण द्वारा स्वीकृत हुआ था। विपक्षी द्वारा कतिपय विचलन किये जाने पर अधिनियम की सुसंगत धाराओं के अन्तर्गत कार्यवाही की गयी एवं भवन को सील कर दिया गया। विपक्षी द्वारा सील खोले जाने के अनुरोध पर, कोई नया निर्माण न किये जाने की शर्त पर दिनांक 20-01-2005 को प्राधिकरण द्वारा सील खोल दिया गया। तदोपरान्त विपक्षी द्वारा दिनांक 24-01-2005 को शमन/प्रस्तावित मानचित्र प्रस्तुत किया गया, जिसपर इन्टेक के परामर्श/अनुमोदित मानचित्र एवं भारतीय पुरातत्व विभाग की अनापत्ति के आलोक में शमन मानचित्र दिनांक 03-03-2005 को स्वीकृत किया गया, जिसकी संचिका संख्या -4/96-होटल-विन्यास है। जोनल अधिकारी द्वारा यह भी अवगत कराया गया कि स्थल के परीक्षणोपरान्त यह पाया गया कि मौके पर उक्त शमन मानचित्र के अनुसार ही निर्माण किया गया है, स्थल पर कुछ आन्तरिक परिवर्तन किया गया है, जोकि संलग्न भवन निर्माण एवं विकास उपविधि, 2008 के अध्याय-3 में प्रस्तर-3.1.1 के अनुसार अनुज्ञा से छूट के अन्तर्गत आता है। स्थल निरीक्षणोपरान्त यह पाया गया कि मौके पर स्वीकृत शमन मानचित्र में आन्तरिक रूप से विचलन कर कुछ परिवर्तन/ परिवर्द्धन किया गया है, किन्तु बाह्य स्वरूप में कोई परिवर्तन नही किया गया है। इस सन्दर्भ में संलग्न भवन निर्माण एवं विकास उपविधि, 2008 के अध्याय-3 में प्रस्तर 3.1.1. के अनुसार आन्तरिक परिवर्तन / परिवर्द्धन से सम्बन्धित अनुज्ञा से छूट विषयक शासन स्तर से कतिपय प्राविधान प्राविधानित किये गये है, जो प्रश्नगत प्रकरण में भी लागू होते है। पिटीशनर के प्रतिनिधि द्वारा दरभंगा पैलेस के पीछे के निर्माण पर भी आपत्ति उठाई गई और कहा गया कि पीछे के बाह्य स्वरूप में परिवर्तन किया गया है। अतएव पूर्व स्थिति का आकलन करने हेतु पीछे स्थित भवन संख्या डी0 20/21, मोहल्ला-मुंशीघाट के ऊपरी मंजिल पैर जाकर दरभंगा पैलेस का अवलोकन

-4

199

किया गया। भवन स्वामी तथा तत्समय क्षेत्रीय नागरिक उपस्थित हुये और अवगत कराया कि कौटिल्या सोसाइटी का रिहायशी भवन पीछे है, जिसमें रेस्टोरेन्ट है तथा विदेशी ठहरते है। वर्तमान भवन की मरम्मत आदि के कारण कौटिया सोसाइटी का व्यवसाय प्रभावित हो रहा है, जिसके कारण प्रकरण शमन होने पर भी निजीहित में जनहित याचिका का सहारा लिया गया है। कौटिल्या सोसाइटी के प्रतिनिधि द्वारा उक्त अवैध निर्माण पर आपत्ति उठाई गई एवं ध्वस्तीकरण हेतु अनुरोध किया गया। रिट याचिका संख्या–71449/ 2005 में पारित आदेश दिनांक 18–01–2008 अवलोकनीय है, जिसके क्रम में पक्ष द्वारा स्वीकृत मानचित्र के अनुसार निर्माण कराने हेतु उपाध्यक्ष द्वारा दिनांक 07–07–2008 को आदेशित किया गया है।

8– श्री अजय कुमार द्विवेदी व श्री विजय द्विवेदी, पुत्रगण स्व0 राजेन्द्र द्विवेदी, डी021/17, राना महाल, वाराणसी, संचिका संख्या–डी0109/04 (नो0)

जोनल अधिकारी द्वारा अवगत कराया गया कि दो भवनों के बीच की गली को पाटकर प्रथम तल पर 10x10 फिट माप में एक कमरा का अवैध निर्माण कराने पर अधिनियम की सुसंगत धाराओं के अन्तर्गत कार्यवाही करते हुये दिनांक 17–05–2006 को ध्वस्तीकरण आदेश पारित किया गया एवं अवैध निर्माण स्थल को दिनांक 01–12–2009 को सील करा दिया गया, तदोपरान्त दिनांक 10–09–2009 को प्रश्नगत अवैध निर्माण को पुलिस बल की मौजूदगी में ध्वस्त करा दिया गया। स्थल निरीक्षण में उक्त अवैध निर्माण ध्वस्त कराया जाना पाया गया।

9– श्री शम्भूनाथ त्रिपाठी, डी03/24–ए, मीरघाट, वाराणसी, संचिका संख्या–डी0 140/01(नो0)

जोनल अधिकारी द्वारा अवगत कराया गया कि उक्त भवन में द्वितीय खण्ड पर कमरा, स्टोर का अवैध निर्माण कराये जाने पर अधिनियम की सुसंगत धारा के अन्तर्गत दिनांक 21–01–2002 को कार्यवाही करते हुये दिनांक 18–10–2006 को ध्वस्तीकरण आदेश पारित किया गया। इस आदेश के विरुद्ध आयुक्त न्यायालय में अपील की गयी थी, जिसमें दिनांक 20–11–2006 को अदम पैरवी में खारिज कर दिया गया। सम्बन्धित आदेश की प्रति संलग्न है। प्राधिकरण द्वारा ध्वस्तीकरण की कार्यवाही की जा रही है। पुलिस बल उपलब्ध कराने हेतु प्रेषित पत्रों की छाया प्रति संलग्न है।

10– श्री गोकुल शर्मा, डी022/16, चौसट्टी घाट, वाराणसी, संचिका संख्या– डी072 /99(नो0)

जोनल अधिकारी द्वारा अवगत कराया गया कि उक्त भवन में भूखण्ड पर दीवालों का निर्माण एवं फिनिशिंग का कार्य कराये जाने पर अधिनियम की सुसंगत धाराओं के अन्तर्गत दिनांक 25–08–2009 को कार्यवाही करते हुये दिनांक 03–11–2007 को मौके पर ध्वस्तीकरण आदेश पारित किया गया एवं मौके पर अवैध रूप से भूतल में निर्मित 25.00 फिट लम्बी दीवाल को पुलिस बल की मौजूदगी में दिनांक 10–09–2009 को ध्वस्त करा दिया गया। स्थल निरीक्षण में उक्त दीवाल ध्वस्त कराया जाना पाया गया।

दिनांक 21–03–2011

(चन्द्र लाल श्रीवास्तव)
मा0 उच्च न्यायालय द्वारा नियुक्त आयुक्त

200

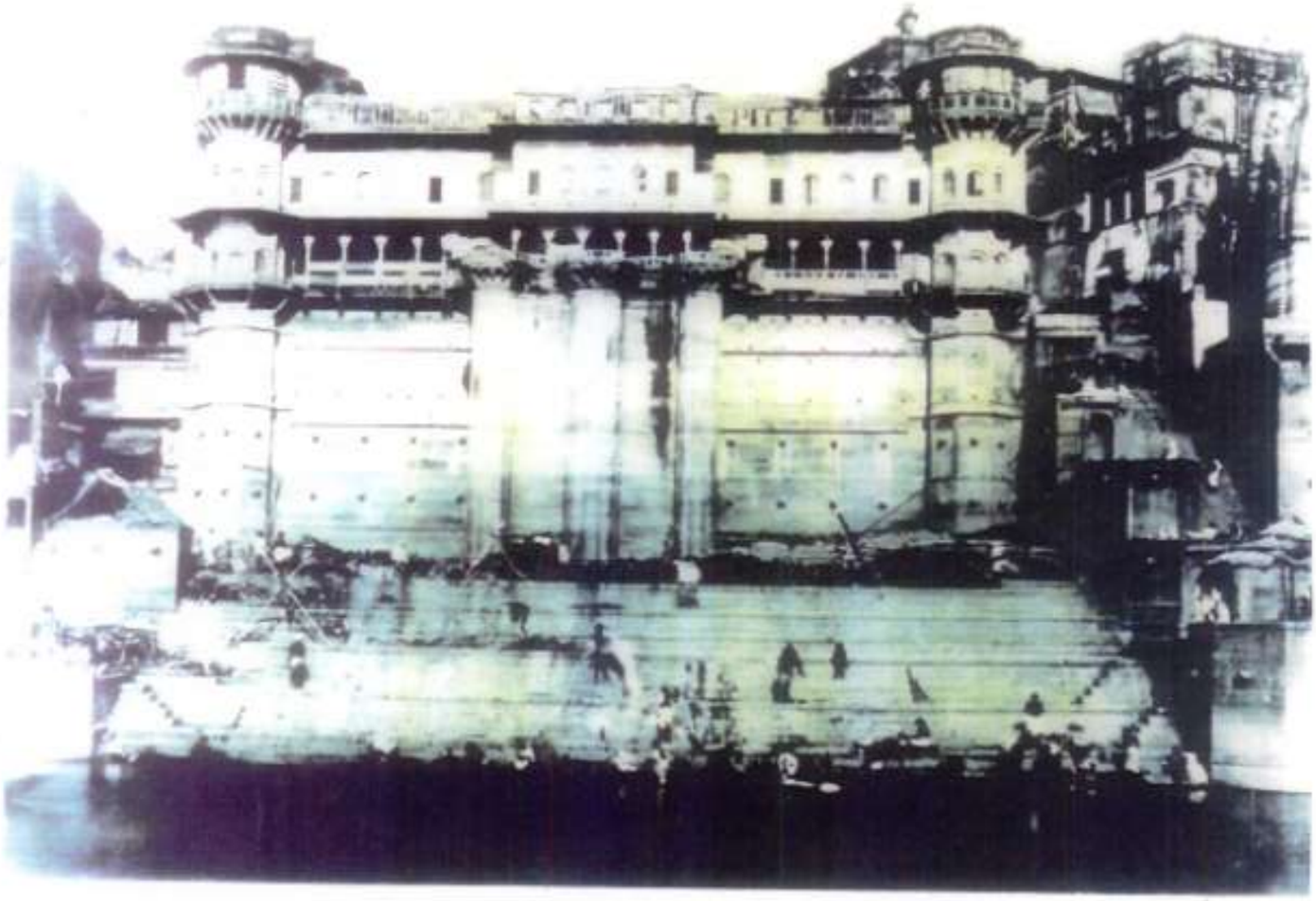
Photographs of Darbhanga Palace

As it was originally there, after construction of Lift, of the year 1995 at the time of purchase by Answering respondents 6 to 8, Sketch photographs of Darbhanga Palace proposed to be re-constructed by restoration conservation and renovation by Answering Respondents for consultation with INTACH, Original Photo Facade (facing to river), Comparative photographs at the time of purchase- after re-construction and Location of house of petitioners behind that of answering respondents 6 to 8

201

42 219 115

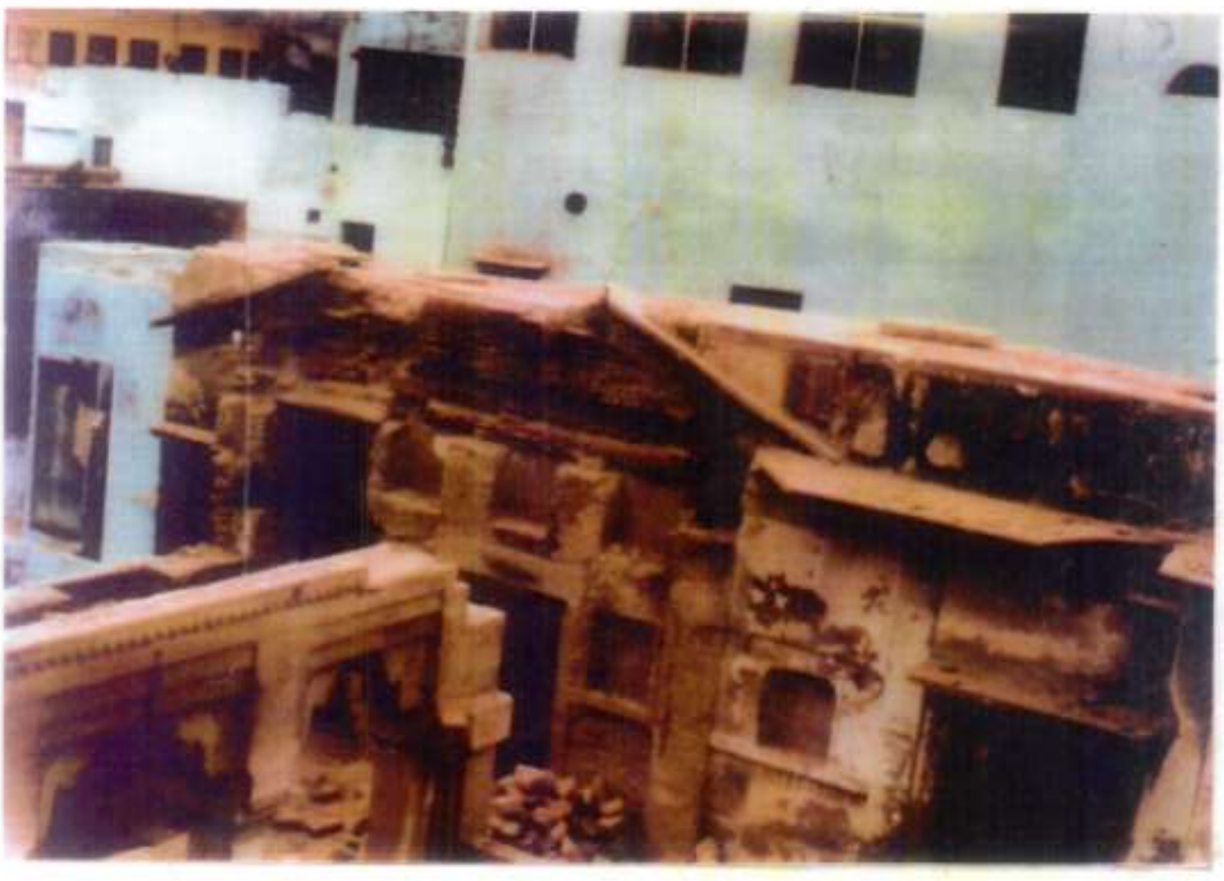
Photograph of Darbhanga Palace as it was Originally there IN 1900 AD

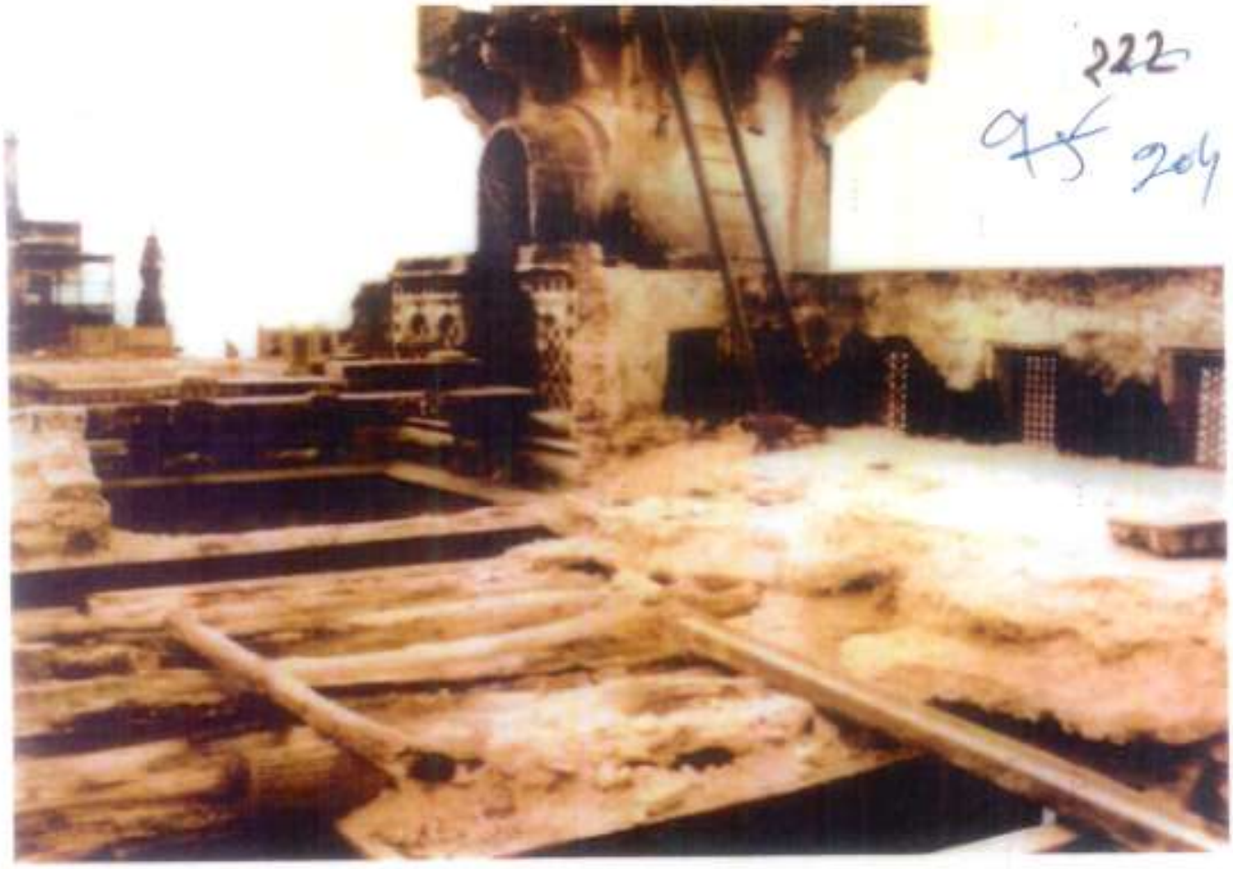


202993 2200

Photograph of Darbhanga Palace, after the construction of lift

221
44 203



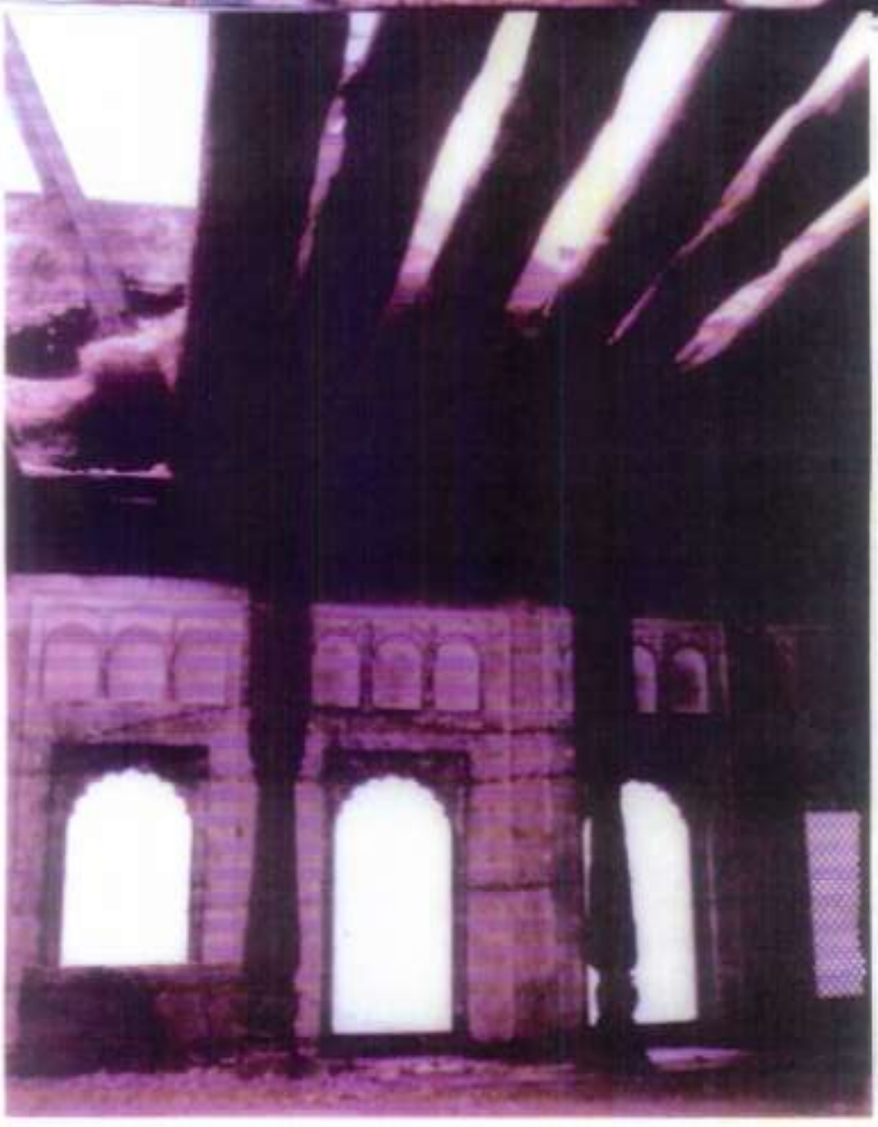

222
204

~~223~~ ~~177~~
205 96

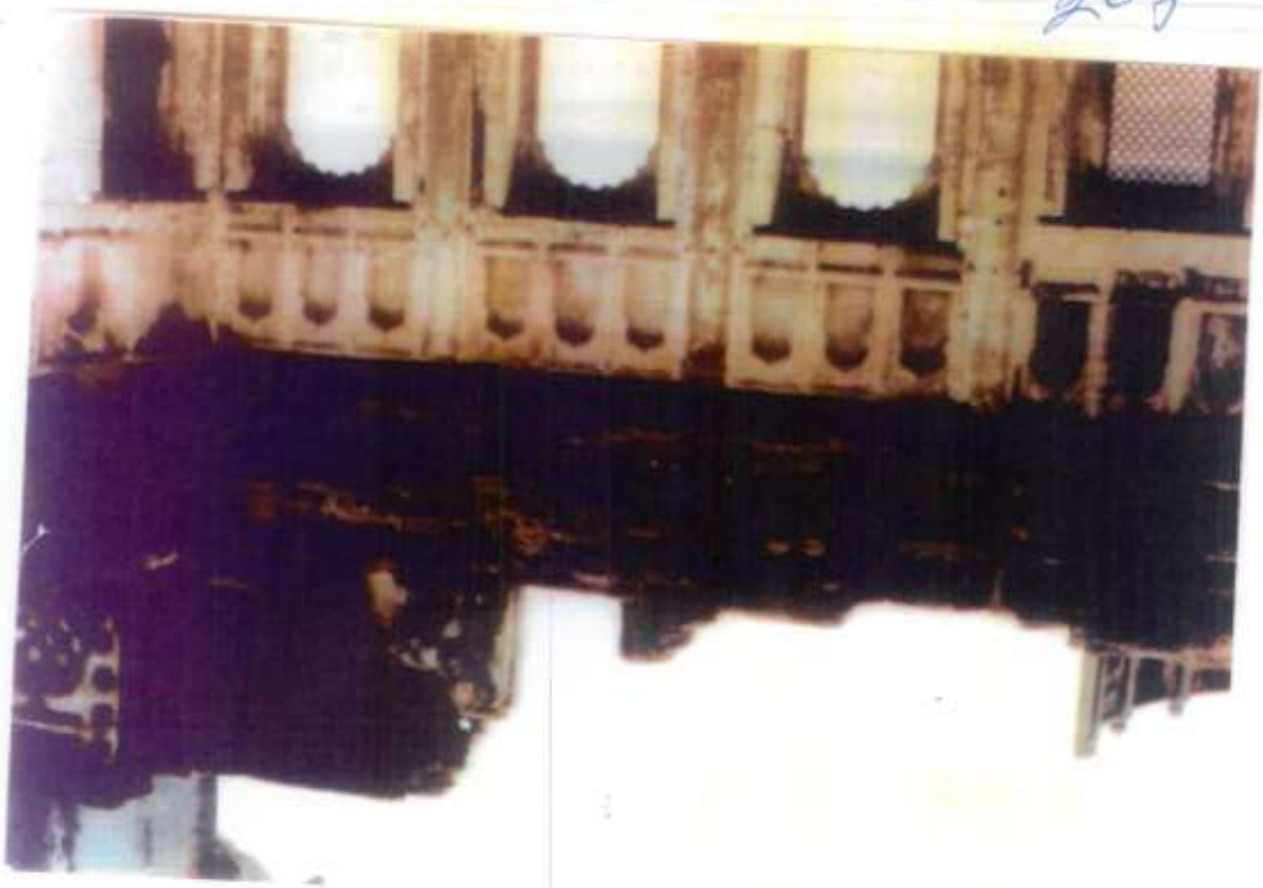
206

224

97



207



209

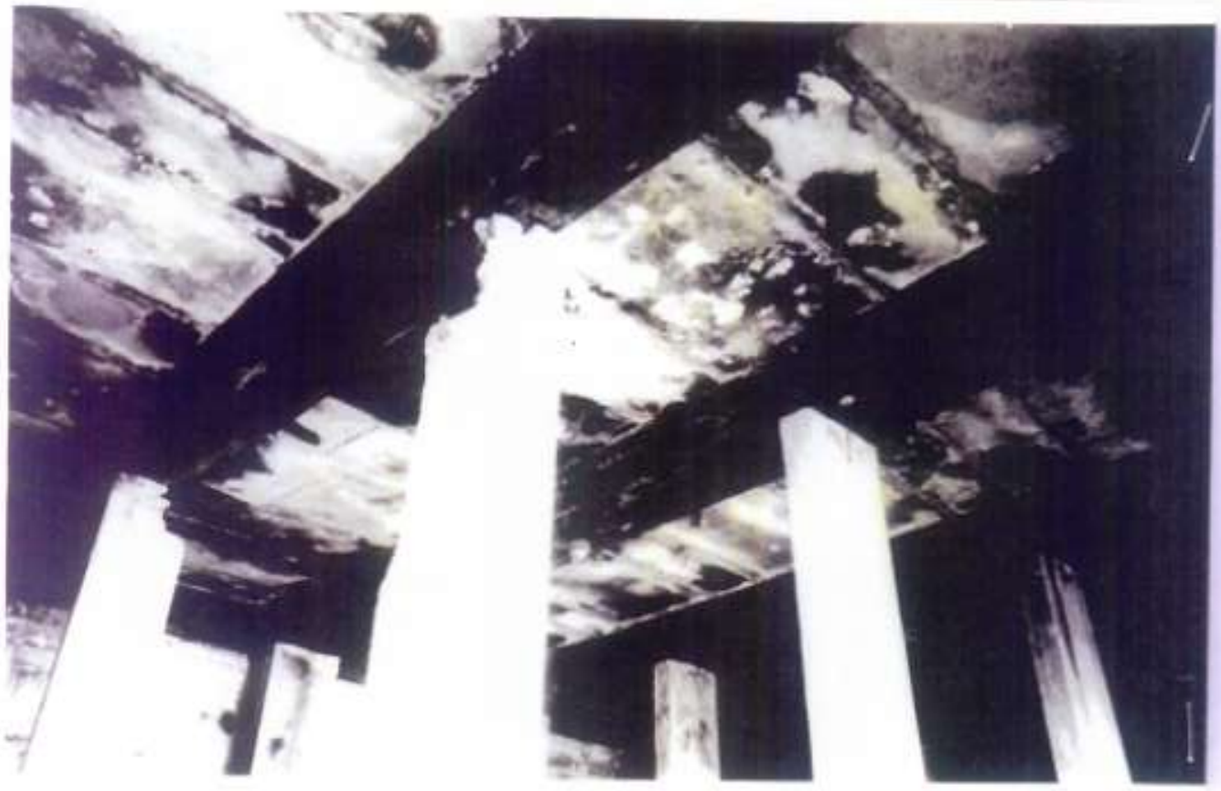
99

B2 24 FLR Roof

2nd floor

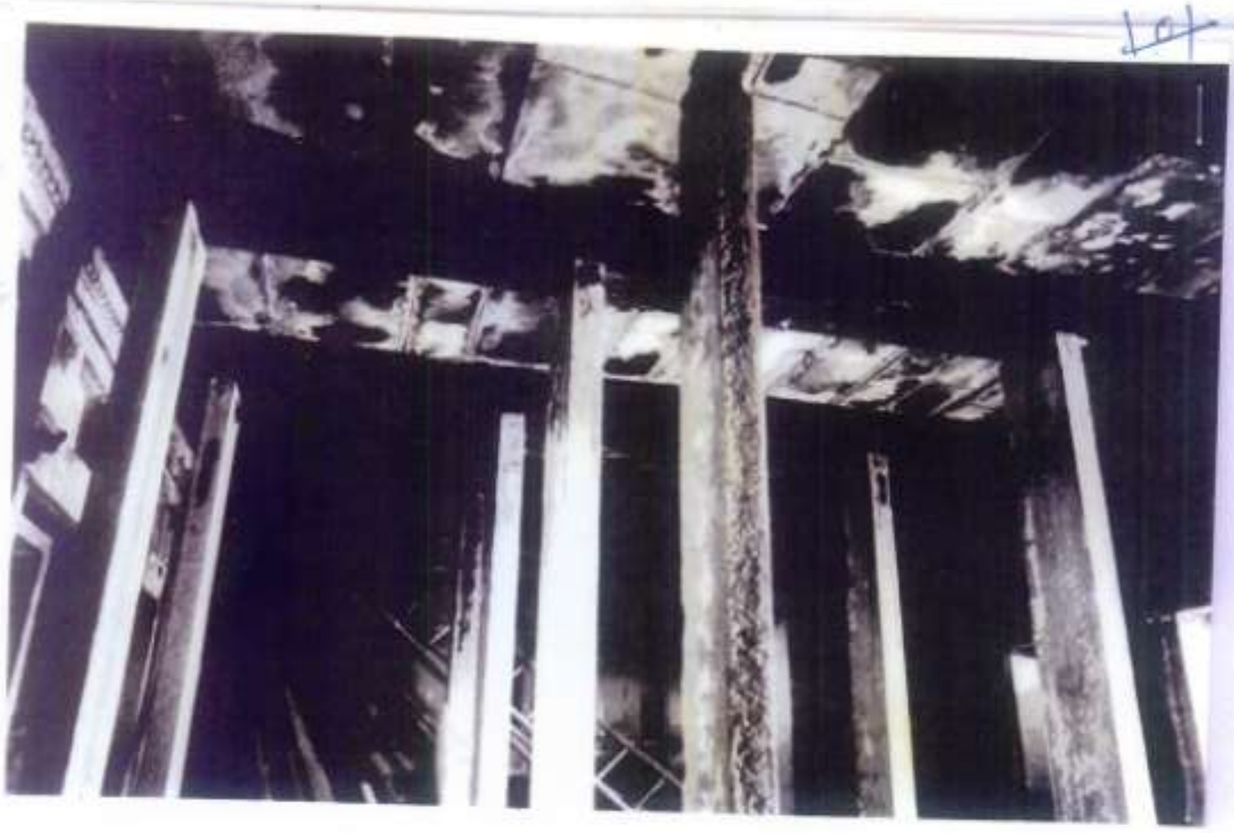
209 100

2nd flr Room



Ground Flr Hall

210



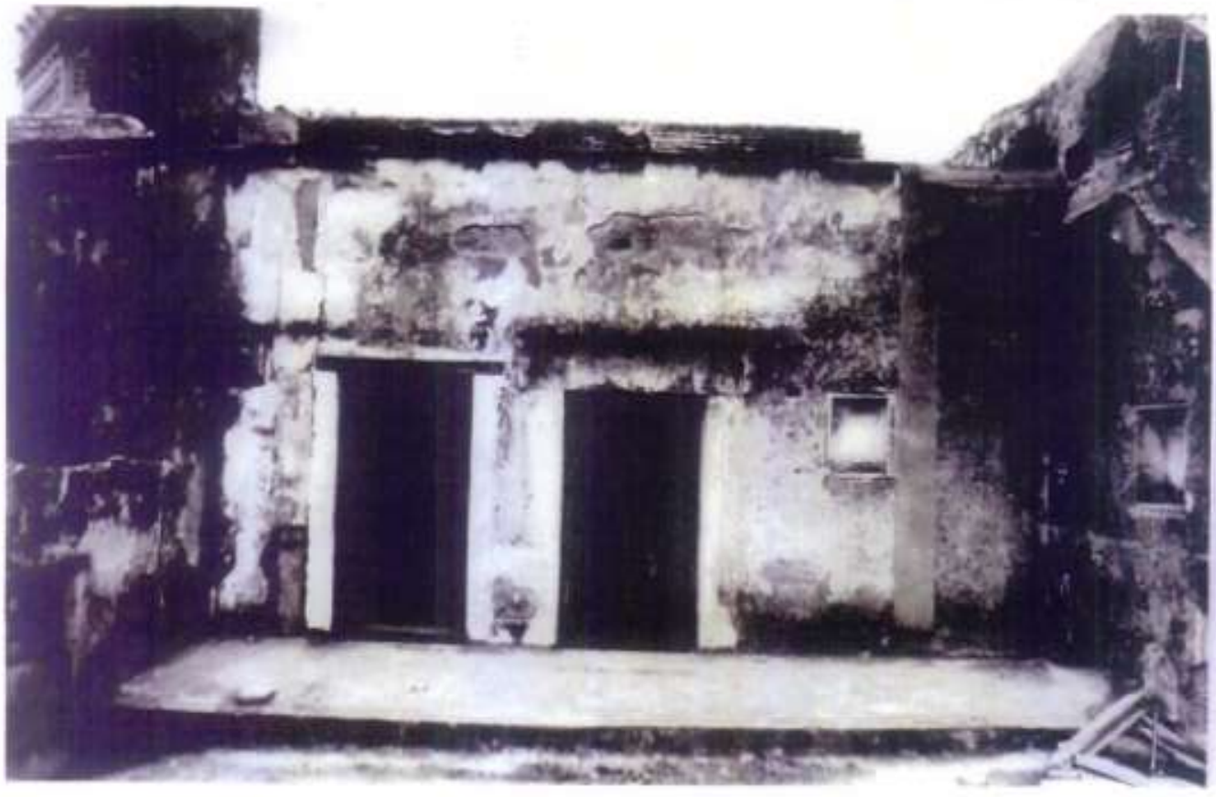
GROUND FLOOR

1st floor Room 2

211

~~102~~

2nd FLR



2nd FLR ROOM

212

GROUND FLR, ANGAN

GROUND FLR ANGAN

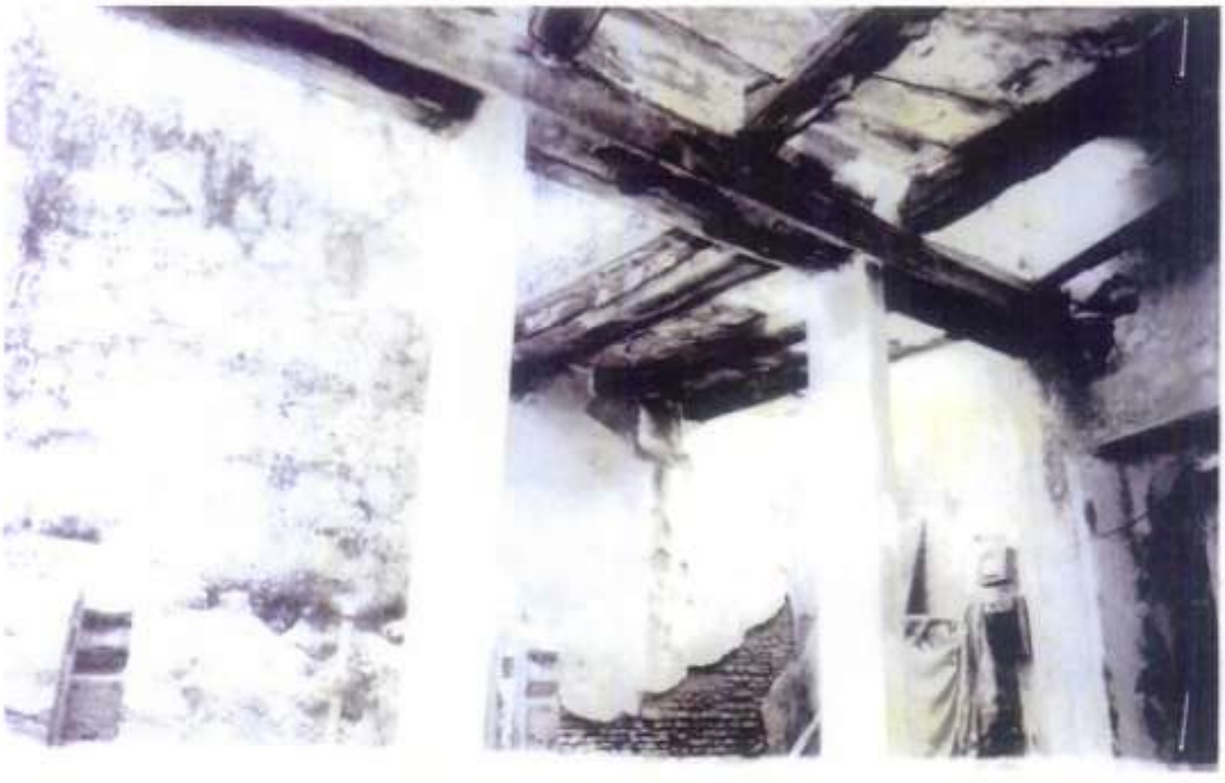
~~Lot~~ 213

GROUND FLR VERANDA

SKIDZ BUNGALOW

~~105~~ 214

GROUND FLR NORTH



GROUND FLR
South.

Ground flr Room

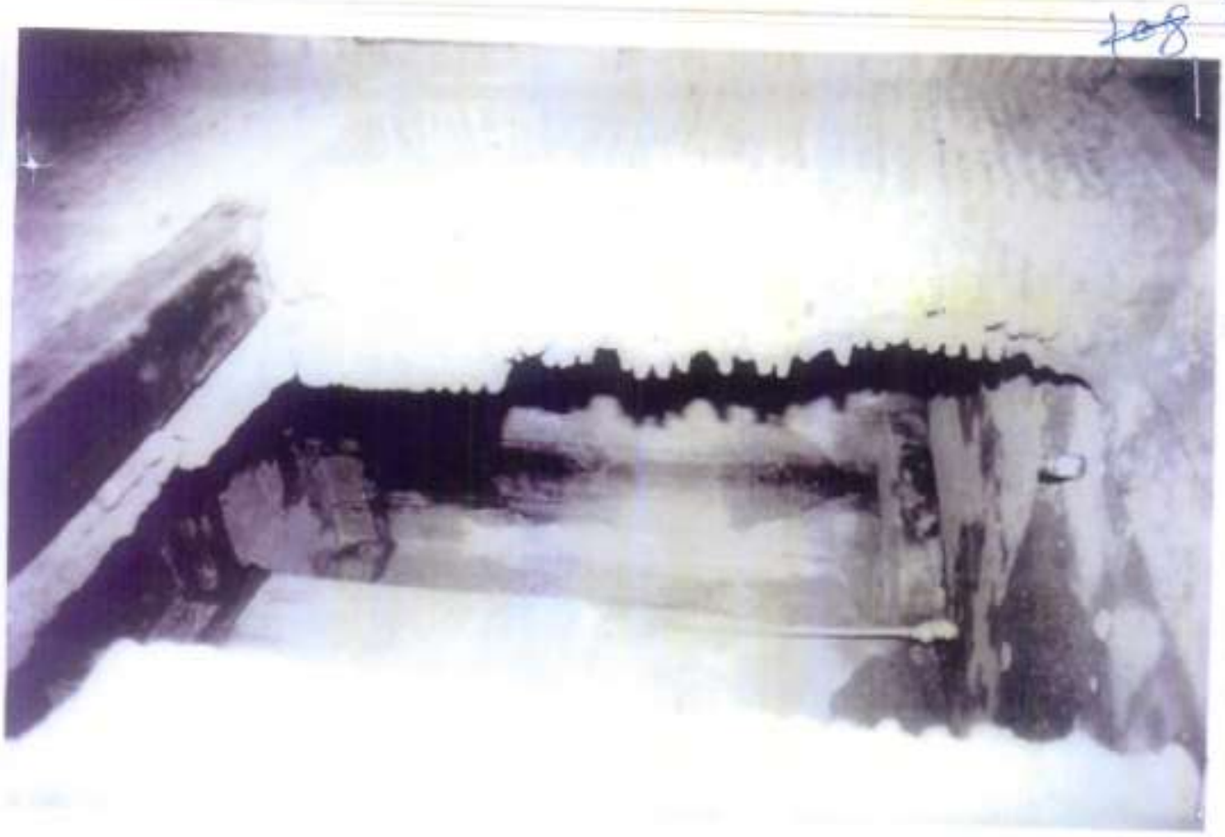
2nd flr Room.

216

Back Alley

1st FLR Room

~~208~~ 217



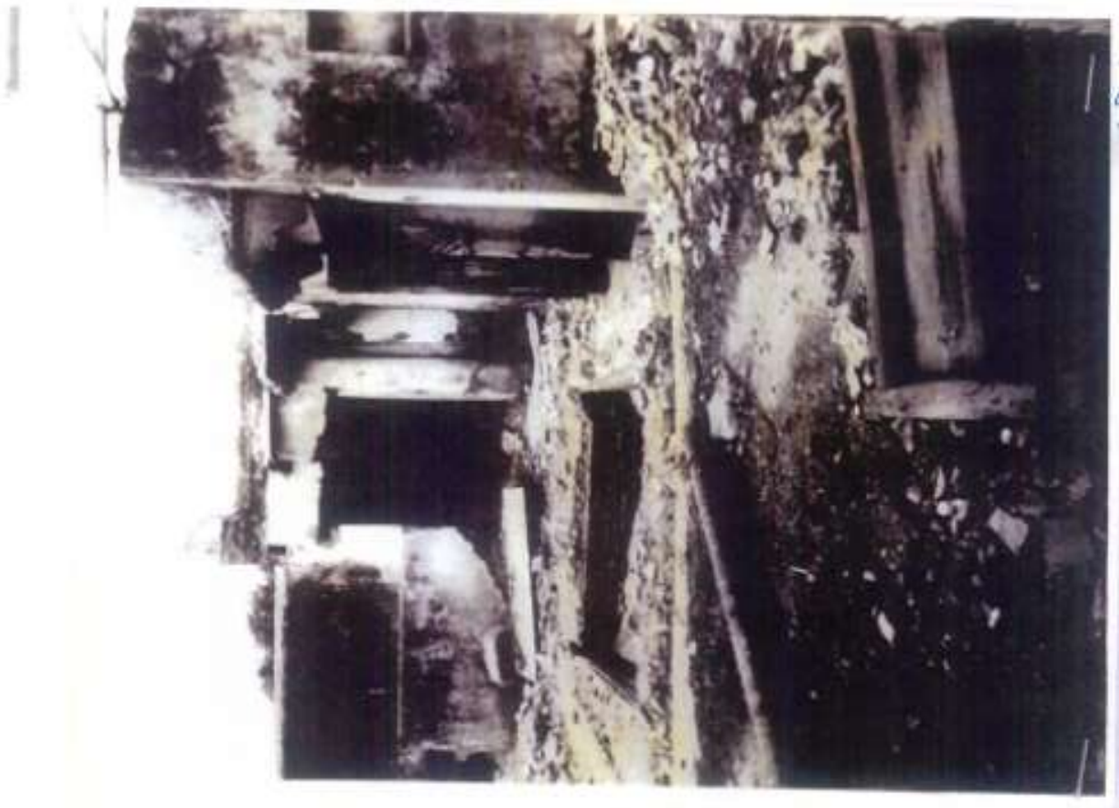
2nd floor

2nd floor Room

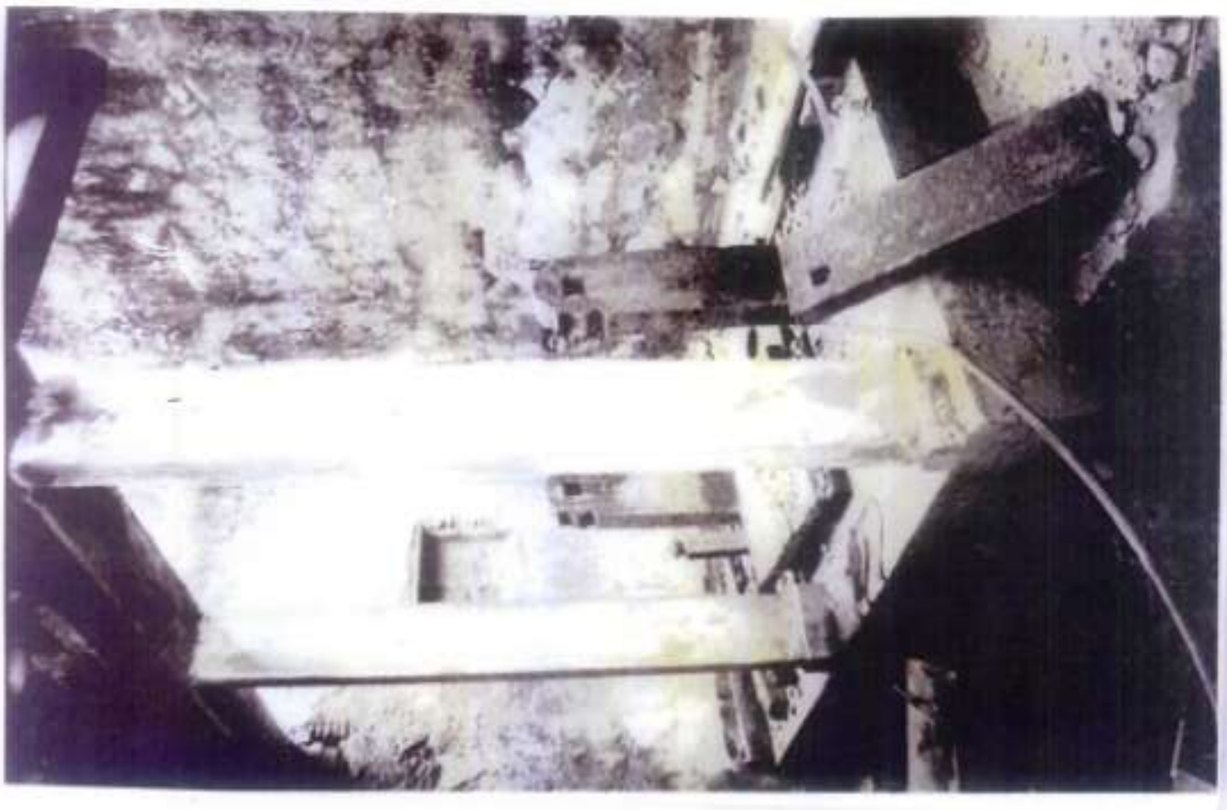
~~109~~ 218

2nd FLR Room

3rd flr Roof



219



270 127

BEFORE

RECONSTRUCTED

NOW

FROM RIVER FRONT
(EAST)

BEFORE

NOW

RECONSTRUCTED BURJ

227
112)

BEFORE

4

NOW

9227
113

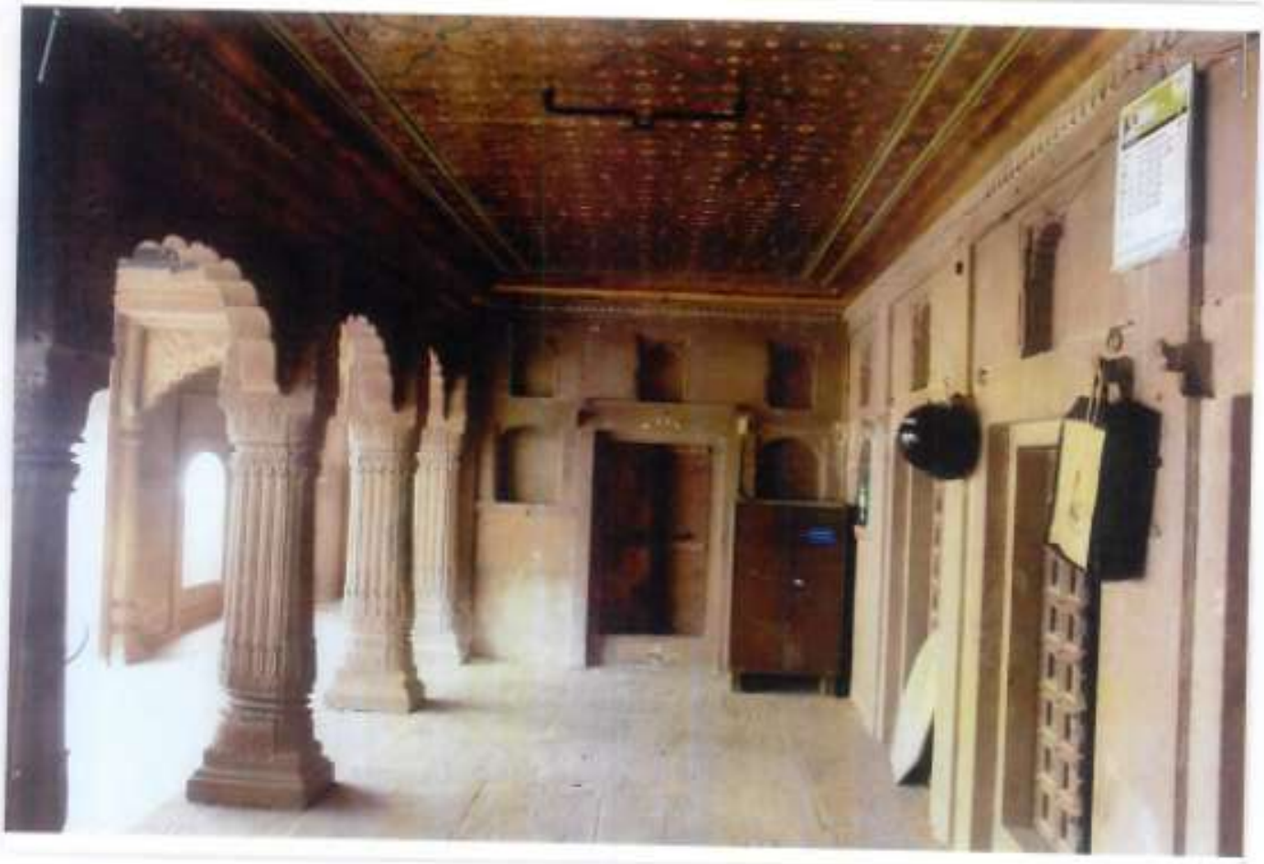
22A

BIG ARCH ON ~~THIRD~~ UPPER FLOOR & WITH ROYAL INSIGNIA.

ROW OF ROOMS ON THE BACK SIDE OF ~~UPPER~~ ~~FL~~ UPPER LEVEL OF 2ND FLOOR.

225
125

224



226
227
117

228

229 229 (3)

APRIL 2013

RIVER VIEW FROM GROUND FLOOR

GROUND FLOOR FACING TO RIVER

23° 229

(6)

GROUND FLOOR AND FIRST FLOOR FACING CENTRAL COURT YARD

2013 APRIL

1ST FLOOR GOLD PAINTING WITH CHANDELIER

230 231

(8)

2nd FLOOR VERANDA OF COURT YARD

APRIL 2013

1ST FLOOR VERANDA OF COURT YARD

232

(4)

122

2nd FLOOR
OLD LOOK MAINTAINED

2nd FLOOR / ORIGINAL STONE PILLAR

2013 APRIL

232

(5)

CENTRAL COURT YARD
WITH BIG ARCH ON 3RD FLOOR

3RD FLOOR ARCH FACING TO RIVER

APRIL 2013

2384

STONE CLADING BACK SIDE
A FOLLOWING HERITAGE STYIE

NORTH / WEST CORNER
BACK SIDE

APRIL 2013

235

(7)

125

BACK WALL STONE CARVING CLOSE UP

2013 APRIL

BACK WALL CLOSE UP PICTURE
APPROVAL INTACK

236 235

APRIL

NORTH SIDE STONE CLADDING

2013

BACK SIDE

237

POINTS/SUBMISSIONS

1- Present Private Interest Litigation in the garb of Public Interest Litigation is aimed at one particular building Darbhanga Palace owned and possessed by respondent nos. 6 to 8 which is apparent from the fact that out of 53 paragraphs of the writ petition 21 paras (26 to 29, 31 to 44, 46, 47 and 50) as well as relief no. (ii) are confined to Darbhanga Palace inasmuch as petitioner no 2 is running a Guest House/Lodge, Restaurant, Hukka Parlour just behind Darbhanga Palace, after a lane and petitioner no. 2 only wants that Darbhanga Palace may not be restored to its original shape, may fell down so that tourists coming over her Guest House may have full view of river Ganges.

2- Petitioners have no locus standi to file present petition, details whereof may be had from heading "Locus Standi of Petitioners to file present petition".

3- Answering respondent nos. 6 to 8 carried out restoration, renovation, conservation and re-construction work in accordance with sanctioned plan and map dated 26-4-1997, revised and compounded on 3-3-2005 in consultation with INTACH, authorities of which inspected Darbhanga Palace from time to time as per direction of VDA, Varanasi and submitted reports from time to time appreciating the work of answering respondents in restoring Darbhanga Palace as well as NOC issued by ASI and there is no illegality in it.

4- At the time of sanctioning the plan of Darbhanga Palace i.e. on 26-4-97, ti ere was no prohibition of any kind of any activity on the ghats or bank of the river inasmuch as prohibition came for the first time on 16-11-1998 i.e. much after sanctioning of plan. Besides said Government Order dated 16-11-1998 was further relaxed from time to time by Government Orders dated 5-2-2000, 31-7-2000 and 11-4-2001. In view of the aforesaid facts work carried out by the answering respondents is not hit by any law of the land rather work was carried out in accordance with law.

5- Back wall of Darbhanga Palace was in ruinous condition and had developed cracks which was unsafe as such same was reconstructed after getting sanction from V.D.A. There is no variation of the plan sanctioned in 1997 or compounded in 2005 except some internal changes which includes shifting of toilet from one place to another inside the room and necessary replacement of back wall permissible under law otherwise building would not bear load.

6- **Revised plan was submitted for compounding in accordance with** law. The outer structure remains same as per original sanctioned plan of 1997.

239

The reconstruction work on the rear side was completed in 2003 and for restoration only stone cladding work was done which is fortified from the report of the INTACH dated 30-6-2003/1-7-2003.

7- The answering respondents carried out restoration, conservation and renovation work in their house as per sanctioned plan and map by VDA, Varanasi and approved by INTACH after obtaining permission from various departments as required.

8- After completion of re-construction and renovation work not only authorities of VDA but also Authorities of INTACH inspected Darbhanga Palace from time to time and found everything in accordance with plan, as such VDA issued Completion Certificate which has become final.

9- In any view of the case there is a alternative remedy under section 41(3) of U.P. Urban Planning and Development Act, 1973 before the State Government. Answering respondents carried out construction/re-construction, renovation and conservation as per plan sanctioned by VDA, Varanasi in consultation with INTACH alongwith compounded plan as well as NOC issued by ASI which is also fortified from the judgment and order dated 18-1-2008, passed in Writ Petition No. 71449 of 2005 which has attained finality and amount to judgment in rem binding on all concern as well as principles of *Res-Judicata* will also apply.

10- Petitioners laid much emphasis about entire new constructions of four floors (G, G+1, G+2, G+3, G+4) which is totally incorrect. From the very beginning building is of G, G+1 & G+2 (total three floors). There are ground-floor, first-floor, second lower floor (mezzanine floor) and second upper floor which was duly sanctioned in 1997.

11- From the photographs already brought on record, it is clear that there were three floors as mentioned in the map and it is also visible that upper floor was totally in ruinous condition, sky is visible from within building as at most of the places there was no roof and while restoration and reconstruction even remains of roofs and back wall had fallen down which requires construction of the roofs and repla cement of back wall so that it may strengthen the building otherwise it will fell down.

12- Petitioners alleged about expansion of ground coverage area which is also apparent from reports that there is no expansion of ground coverage area and that prior to sanction, approval of INTACH was obtained. Original height has been maintained and whatever has been done that were within parameters as per sanctioned/compounded plan under supervision of INTACH and authorities of V.D.A.

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13- Impression being given by petitioners that Darbhanga Palace is **'Heritage Building'** is totally incorrect nor has it ever been notified/declared as such.

14- Hon'ble Court also appointed Sri C.B. Srivastava (Retd. District Judge) as Commissioner to make spot inspection and submit report which is already on record to appreciate the controversy and from that it can be inferred that answering respondents have carried out work in accordance with law and that it is petitioner no.2 whose personal interest is involved.

15- Petitioners tried to give an impression to Hon'ble Court that there are several F.I.Rs. against owners of Darbhanga Palace which is factually incorrect.

16- Petitioners no. 2 is running a Guest House, Restaurant, Hukka Parlour etc. just behind Darbhanga Palance, after a lane, even without getting requisite registration under Sarais Act, 1867 which is mandatory in view of section 5 of the said Act which provides that lodgers, etc. not to be received in Sarais until registered and section 6 empowers District Magistrate to refuse to register keeper not producing certificate of character, section 7 speaks of duties of keepers of Sarais. Section 14 provides for penalty for infringing Act or Regulations and section 15 provides for conviction for third offence to disqualify person from keeping Sarais.

17- Registration of Petitioners society expired long back not renewed inasmuch as petitioner no.2 is also foreign national, as such they cannot file present petition. Besides House No. D 20/21, Munshi Ghat, Varanasi situate behind back of Darbhanga Palace was purchased by foreign nationals even without permission from the Government of India and petitioner no.2 was raising construction in the said house in June, 2013 without there being any permission or sanction from VDA which is apparent from FIR dated 8-6-2013 and that too in gross violation of direction issued by the Hon'ble Court, as such it is clear that petitioners have not come up before Hon'ble Court with clean hands.

18- Due to illegal activities of petitioners answering respondents suffered huge loss financial loss as well as mental agony as they invested more than Rs. 8 Crores and for last about 10 years they are suffering as such petition is liable to be dismissed with heavy exemplary cost.

Submitted by :

(Ajay Kumar Singh)
Advocate,
Counsel for the Respondent Nos. 6 & 7

Date : April _____, 2014

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Case Laws relied on by respondent nos. 6 to 8

1- (2005) 1 SCC 590,
Dattaraj Nathuji Thaware Vs. State of Maharashtra and others

2- (2004) 3 SCC 349,
Ashok Kumar Pandey Vs. State of W.B

3- AIR 1961 SC 1457
Daryao and others Vs. State of U.P. and others.

4- AIR 1960 SC 1186
Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and others

5- (1997) 5 SCC 446,
Sri Ramdas Motor Transport Ltd and others Vs. Tadi Adhinarayana Reddy and others

6- (2011) 2 SCC 782,
Kanaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others

7- (2007) 6 SCC 506
National Council For Civil Liberties Vs. Union of India and others

8- AIR 2007 SC 758,
Neetu Vs. State of Punjab and others

9- (2006)12 SCC 360

10- Writ Petition No. 4813 and 4816 of 2007, Amit Vishnu Pant Khot Vs. Union of India and others decided by Bombay High Court.

11- 2003(4) CTC 513 Indian National Trust For Art and Cultural Heritage Vs. Chennai Metropolitan Development Authority and others decided by Madras High Court on 17-11-2003.

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aside and the matter be remanded back to the High Court to hear the appellants herein on the question of grant of leave to appeal. Since all the respondents-accused are appellants herein, service of fresh notice is not necessary and we direct the said appellants to appear in Criminal Application No. 847 of 2003 before the High Court of Bombay on 11-2-2005 either personally or through their advocates and on such appearance the Court will dispose of the above application after hearing the parties in accordance with law.

10. The appeals are allowed.

(2005) 1 Supreme Court Cases 590

(BEFORE ARIJIT PASAYAT AND S.H. KAPADIA, JJ.)

DATTARAJ NATHUJI THAWARE .. Petitioner;

Versus

STATE OF MAHARASHTRA AND OTHERS .. Respondents.

SLP (C) No. 26269 of 2004†, decided on December 14, 2004

A. Constitution of India — Arts. 32, 226 and 136 — PIL — Abuse of, by lawyers — Appellant-petitioner, a lawyer, having filed a PIL, caught red-handed blackmailing Respondents 6 and 7 in respect thereof and accepting "blackmailing" money — High Court finding that no public interest was involved, dismissing said petition and imposing exemplary costs of Rs 25,000 on petitioner and directing them to be paid to Respondents 6 and 7 — Supreme Court in appeal by petitioner, deprecating and censuring his conduct with deep regret, calling it a black day for the black-robed professionals (if allegations as found by High Court were true, criminal proceedings in respect thereof pending) — Supreme Court not imposing further exemplary costs only in light of fact that High Court had already done so — Bar Councils and Bar Associations in India exhorted to see that process of law was not abused and polluted by its members and directed to ensure that no member of the Bar became a party to frivolous petitions in the name of public interest litigation — Copy of this order directed to be sent to Bar Council of India and SCBA for necessary action — Advocates Act, 1961 — Ss. 35, 36, 6 and 7 (Paras 1 to 3 and 20 to 22)

B. Constitution of India — Arts. 32 and 226 — PIL — Meaning, nature and scope of — PILs to be admitted with great care — Considerations and factors involved therein — Duty of courts — For redressal only of genuine public wrongs or injury — Not for redressal of private, publicity-oriented or political disputes or other disputes not genuinely concerned with public interest — Moreover, courts to be watchful that no one's character is besmirched, and that justifiable executive actions are not assailed for oblique motives — Court has to be extremely careful that it does not encroach upon sphere reserved by the Constitution for the executive and legislature — Value to be placed on time of courts — Serpentine queues of

† Arising out of CC No. 11374 of 2004. From the Judgment and Order dated 28/14-6-2004 of the Bombay High Court at Nagpur in WP No. 648 of 2004

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genuinely aggrieved litigants being denied access to courts due to admission of so-called PILs — Resultant waste of precious judicial time on admission of undeserving PILs though parameters for admission thereof had been indicated in a large number of cases, deprecated and resultant loss of faith in administration of justice bemoaned — Constitutional law — Separation of powers (Paras 4 to 7, 11, 12, 14, 15 and 16)

C. **Constitution of India — Arts. 32 and 226 — PIL — Maintainability — Information on which PIL may be based — Nature and adequacy of permissible information — Necessity of disclosure of sources of information — Imposition of exemplary costs on failure to meet requisite criteria for proper information on which PILs may be based — Evidence Act, 1872 — Chs. III to V (Paras 14 and 16)**

D. **Constitution of India — Arts. 32 and 226 — PIL — Costs — Exemplary costs — Filtering out of frivolous PILs and imposition of exemplary costs (Para 14)**

E. **Constitution of India — Arts. 32 and 226 — PIL — Standing/Locus standi — Rule for — Reiterated**

A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

(Paras 4, 12 and 14)

Ashok Kumar Pandey v. *State of W.B.*, (2004) 3 SCC 349; *B. Singh (Dr.)* v. *Union of India*, (2004) 3 SCC 363, *followed*

Janata Dal v. *H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36; *Kazi Lhendup Dorji* v. *CBI*, 1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873; *Ramjas Foundation* v. *Union of India*, 1993 Supp (2) SCC 20 : AIR 1993 SC 852; *K.R. Srinivas* v. *R.M. Premchand*, (1994) 6 SCC 620; *State of Maharashtra* v. *Prabhu*, (1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116; *A.P. State Financial Corpn.* v. *GAR Re-Rolling Mills*, (1994) 2 SCC 647 : AIR 1994 SC 2151; *Buddhi Kota Subbarao (Dr.)* v. *K. Parasaran*, (1996) 5 SCC 530 : 1996 SCC (Cri) 1038; *S.P. Gupta* v. *Union of India*, 1981 Supp SCC 87; *State of H.P.* v. *A Parent of a Student of Medical College*, (1985) 3 SCC 169, *relied on*

F. **Constitution of India — Arts. 32 and 226 — PIL — Maintainability — Service matters — *Duryodhan Sahu case*, (1998) 7 SCC 273, followed as to inadmissibility of PILs in respect of service matters — High Courts exhorted to throw out such matters on basis of said decision (Para 16)**

Duryodhan Sahu (Dr.) v. *Jitendra Kumar Mishra*, (1998) 7 SCC 273 : 1998 SCC (L&S) 1802 : AIR 1999 SC 114, *followed*

Petition dismissed

D-M/A/3094(J)/C

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Advocates who appeared in this case :
Ms Shilpa Chohan and Ms Lalitha Kaushik, Advocates, for the Petitioner.

Chronological list of cases cited *on page(s)*

1. (2004) 3 SCC 363, *B. Singh (Dr.)* v. *Union of India* 597e
2. (2004) 3 SCC 349, *Ashok Kumar Pandey* v. *State of W.B.* 597e
3. (1998) 7 SCC 273 : 1998 SCC (L&S) 1802 : AIR 1999 SC 114, *Duryodhan Sahu (Dr.)* v. *Jitendra Kumar Mishra* 596f-g
4. (1996) 5 SCC 530 : 1996 SCC (Cri) 1038, *Buddhi Kota Subbarao (Dr.)* v. *K. Parasaran* 596d-e
5. (1994) 6 SCC 620, *K.R. Srinivas* v. *R.M. Premchand* 593d
6. (1994) 2 SCC 647 : AIR 1994 SC 2151, *A.P. State Financial Corpn.* v. *GAR Re-Rolling Mills* 596c-d
7. (1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116, *State of Maharashtra* v. *Prabhu* 596c-d
8. 1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873, *Kazi Lhendup Dorji* v. *CBI* 593c
9. 1993 Supp (2) SCC 20 : AIR 1993 SC 852, *Ramjas Foundation* v. *Union of India* 593c-d
10. (1992) 4 SCC 305 : 1993 SCC (Cri) 36, *Janata Dal* v. *H.S. Chowdhary* 593c, 593g
11. (1985) 3 SCC 169, *State of H.P.* v. *A Parent of a Student of Medical College* 597d-e
12. 1981 Supp SCC 87, *S.P. Gupta* v. *Union of India* 597b-c

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.— This case is a sad reflection on members of the legal profession and is almost a black spot on the noble profession. The petitioner who belongs to this profession filed a petition styled as "public interest litigation" before the Nagpur Bench of the Bombay High Court. By the impugned judgment, the High Court dismissed it holding that there was no public interest involved and in fact the petitioner had resorted to blackmailing Respondents 6 and 7 and was caught red-handed accepting "blackmailing" money. The High Court also noticed that the allegations of unauthorised constructions made in the petition were also not true.

2. Costs of Rs 25,000 (Rupees twenty-five thousand only) which was levied, was directed to be paid to the affected Respondents 6 and 7 before the High Court.

3. It is, in fact, a black day for the black-robed professionals, if the allegations, as found by the High Court to be true and which presently appear to be the subject-matter of further proceedings in a criminal case, are true. This will leave the members of the legal profession black-faced for the black deed of the petitioner who may be as the High Court found a black sheep in the profession. Though the petition filed by the petitioner carried the attractive brand name of "public interest litigation", the least that can be said is that it smacks of everything what a public interest litigation should not be.

4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest

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litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". The High Court has found that the case at hand belongs to the last category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *Janata Dal* v. *H.S. Chowdhary*[1] and *Kazi Lhendup Dorji* v. *CBI*[2]. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See *Ramjas Foundation* v. *Union of India*[3] and *K.R. Srinivas* v. *R.M. Premchand*[4].)

5. It is necessary to take note of the meaning of the expression "public interest litigation". In *Stroud's Judicial Dictionary*, Vol. 4 (4th Edn.), "public interest" is defined thus:

> "*Public interest.*—(1) A matter of public or general interest 'does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected' …."

6. In *Black's Law Dictionary* (6th Edn.), "public interest" is defined as follows:

> "*Public interest.*—Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

7. In *Janata Dal case*[1] this Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, has laid down as follows: (SCC p. 331)

> "*53.* The expression 'litigation' means a legal action including all proceedings therein, initiated in a court of law with the purpose of

1 (1992) 4 SCC 305 : 1993 SCC (Cri) 36
2 1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873
3 1993 Supp (2) SCC 20 : AIR 1993 SC 852
4 (1994) 6 SCC 620

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enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows: (SCC p. 334)

"*62.* Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 98 of the said judgment, it has further been pointed out as follows: (SCC pp. 345-46)

"*98.* While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly-developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. In subsequent paras of the said judgment, it was observed as follows: (SCC p. 348, para 109)

"*109.* It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold."

11. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters — government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or

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unauthorised collection of tax amounts are locked up, detenus expecting their release from detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly they lose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows:

> "Public interest law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. The court has to be satisfied about (*a*) the credentials of the applicant; (*b*) the prima facie correctness or nature of information given by him; (*c*) the information being not vague and indefinite. The information should show

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gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (*i*) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (*ii*) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with impostors and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of *pro bono publico*, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra* v. *Prabhu*[5] and *A.P. State Financial Corpn.* v. *GAR Re-Rolling Mills*[6].) No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See *Buddhi Kota Subbarao (Dr.)* v. *K. Parasaran*[7].] Today people rush to courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in courts and among the public.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.)* v. *Jitendra Kumar Mishra*[8] this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet

5 (1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116
6 (1994) 2 SCC 647 : AIR 1994 SC 2151
7 (1996) 5 SCC 530 : 1996 SCC (Cri) 1038 : JT (1996) 7 SC 235
8 (1998) 7 SCC 273 : 1998 SCC (L&S) 1802 : AIR 1999 SC 114

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was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

17. In *S.P. Gupta* v. *Union of India*[9] it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the court under the guise of a public interest litigant. It has also left the following note of caution: (SCC p. 219, para 24)

> "*24.* But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

18. In *State of H.P.* v. *A Parent of a Student of Medical College*[10] it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

19. These aspects have been highlighted in *Ashok Kumar Pandey* v. *State of W.B.*[11] and *B. Singh (Dr.)* v. *Union of India*[12].

20. It is a disturbing feature which needs immediate remedial measure by the Bar Councils and the Bar Associations to see that the process of law is not abused and polluted by its members. It is high time that the Bar Councils and the Bar Associations ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of "public interest litigation". That will be keeping in line with the high traditions of the Bar. No one should be permitted to bring disgrace to the noble profession. We would have imposed exemplary cost in this regard but taking note of the fact that the High Court had already imposed costs of Rs 25,000, we do not propose to impose any further cost.

21. Let copy of this judgment be sent to the Bar Council of India and the Supreme Court Bar Association by the Registry for necessary action.

22. The petition deserves to be dismissed, which we direct.

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9 1981 Supp SCC 87
10 (1985) 3 SCC 169
11 (2004) 3 SCC 349
12 (2004) 3 SCC 363

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(2004) 3 Supreme Court Cases 349

(BEFORE DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.)

ASHOK KUMAR PANDEY .. Petitioner;

Versus

STATE OF W.B. .. Respondent.

Writ Petition (Crl.) No. 199 of 2003†, decided on November 18, 2003

A. Constitution of India — Arts. 32 and 21 — PIL — Locus standi/ Standing — Standing of third party to challenge the sentence and conviction (in this case the pending death sentence) — Legal disability sufficient to permit relaxation of the general rule granting standing only to the aggrieved party — Whether a mere obsession based on religious belief or any other personal philosophy can be regarded as such a disability — Seriousness of consequences that may ensue from relaxation of the rule — Criminal Procedure Code, 1973 — Ss. 320(4)(a), 330(2) r/w Ss. 335(1)(b) and 339 — Minority or insanity as grounds to waive usual rule for locus standi

B. Constitution of India — Art. 32 — PIL — Maintainability — Information on which PIL may be based — Nature and adequacy of permissible information — Necessity of disclosure of sources of information — Roving inquiry in light of inadequate information — When permissible — Imposition of exemplary costs on failure to meet the requisite criteria for proper information on which PILs may be based — Evidence Act, 1872 — Chs. III to V — Necessity of disclosure of information

This petition under Article 32 of the Constitution was filed purportedly in public interest. The prayer in the writ petition was to the effect that the death sentence imposed on one *D* by the Sessions Court, affirmed by the Calcutta High Court and the Supreme Court, needed to be converted to a life sentence because there had been no execution of the death sentence for a long time.

According to the petitioner, he saw a news item on a TV channel wherein it was shown that the authorities were unaware of the non-execution of the death sentence and, therefore, the condemned prisoner, the accused, had suffered a great degree of mental torture and that itself was a ground for conversion of his death sentence to a life sentence on the basis of the ratio in *Triveniben case*, (1989) 1 SCC 678. It was noted that the prayer for conversion of death sentence to life sentence had already been turned down by the Governor of West Bengal and the President of India in February 1994 and June 1994 respectively.

Dismissing the petition, the Supreme Court

Held :

Ordinarily, only the aggrieved party has the right to seek redress under Article 32. Unless the aggrieved party is a minor or insane or one who is suffering from any other disability which the law recognizes as sufficient to permit another person e.g. next friend, to move the court on his behalf, for example, see Sections 320(4)(*a*), 330(2) read with Sections 335(1)(*b*) and 339

† Under Article 32 of the Constitution of India

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CrPC, a third party would not be permitted to initiate proceedings under Article 32. (Para 30)

A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognized by the Code of 1973 or any other law, which would permit initiation of proceedings under Article 32 by a third party, be he a friend. It must be remembered that the repercussions of permitting such a third party to challenge the findings of the court can be serious e.g. any co-accused who may have been acquitted and whose acquittal may have been confirmed would run the risk of a fresh trial and a possible conviction. (Paras 30, 31, 33 and 34)

State of Maharashtra v. *Sukhdev Singh*, (1992) 3 SCC 700 : 1992 SCC (Cri) 705 : AIR 1992 SC 2100; *Simranjit Singh Mann* v. *Union of India*, (1992) 4 SCC 653 : 1993 SCC (Cri) 22 : AIR 1993 SC 280; *Karamjeet Singh* v. *Union of India*, (1992) 4 SCC 666 : 1993 SCC (Cri) 17 : AIR 1993 SC 284, *relied on*

Triveniben v. *State of Gujarat*, (1989) 1 SCC 678 : 1989 SCC (Cri) 248, *cited*

Neither under the provisions of the Code of 1973 nor under any other statute is a third-party stranger permitted to question the correctness of the conviction and sentence. It has not been shown as to how and in what manner the accused condemned prisoner is handicapped in not seeking relief, if any, as available in law. (Paras 34, 35 and 17)

Sources and nature of information on which PIL to be based

The court has to be satisfied about: (*a*) the credentials of the applicant; (*b*) the prima facie correctness or nature of information given by him; and (*c*) the information being not vague and indefinite. The information should show gravity and seriousness involved. (Para 14)

In PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. Whenever frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. (Para 16)

The matter in the case at hand pertains to something which happened or not at Kolkata and what the truth about the news was or cause for the delay, even if it be, is not known or ascertained or even attempted to be ascertained by the petitioner before approaching the Supreme Court. To a pointed query, the petitioner submitted that the petitioner "may not be aware" of his rights, that except the news he heard he could not say any further and "the respondent State may come and clarify the position". This petition cannot be entertained on such speculative foundations and premises and to make a roving enquiry. Maybe, at times even on certain unconfirmed news but depending upon the gravity or heinous nature of the crime alleged to be perpetrated which would prove to be obnoxious to the avowed public policy, morals and greater societal interests involved, courts have ventured to intervene but this is not one such case, on the facts disclosed. (Para 17)

It is reliably learnt that a petition with almost identical prayers was filed before the Calcutta High Court by relatives of the accused and the same has recently been dismissed by the High Court. This is not a fit case which can be entertained and that too, under Article 32 of the Constitution and is accordingly dismissed, but without costs. (Paras 17 and 36)

C. **Constitution of India — Art. 32 — Costs — Exemplary costs — Filtering out of frivolous PILs and imposition of exemplary costs**

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It would be desirable for the courts to filter out frivolous petitions and dismiss them with costs so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.
(Paras 16 and 12)

D. **Constitution of India — Art. 32 — PIL — Meaning of PIL**

[Ed.: See in this regard the discussion in paras 5 to 7.]

Janata Dal v. *H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36, *relied on*

Stroud's Judicial Dictionary, Vol. 4, 4th Edn.; *Black's Law Dictionary*, 6th Edn.; *Report of Public Interest Law*, USA, 1976, Council for Public Interest Law, Ford Foundation, *referred to*

E. **Constitution of India — Art. 32 — PIL — Nature and scope of — PILs to be admitted with great care — Considerations and factors involved therein — Duty of courts — For redressal only of genuine public wrong or public injury — Not for the redressal of private, publicity-oriented or political disputes or other disputes not genuinely concerned with the public interest — Moreover, courts to be watchful that no one's character is besmirched, and that justifiable executive actions are not assailed for oblique motives — The court has to be extremely careful that it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature — Value to be placed on time of courts — Serpentine queues of genuinely aggrieved litigants being denied access to courts due to the admission of so-called PILs — Resultant waste of precious judicial time on admission of undeserving PILs though the parameters for admission thereof had been indicated in a large number of cases, deprecated and resultant loss of faith in administration of justice bemoaned — Constitutional Law — Separation of powers**
(Paras 4, 12 to 16)

State of Maharashtra v. *Prabhu*, (1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116; *A.P. State Financial Corpn.* v. *Gar Re-Rolling Mills*, (1994) 2 SCC 647 : AIR 1994 SC 2151; *Buddhi Kota Subbarao (Dr)* v. *K. Parasaran*, (1996) 5 SCC 530 : 1996 SCC (Cri) 1038; *State of H.P.* v. *A Parent of a Student of Medical College*, (1985) 3 SCC 169; *Sachidanand Pandey* v. *State of W.B.*, (1987) 2 SCC 295; *Ramsharan Autyanuprasi* v. *Union of India*, 1989 Supp (1) SCC 251; *Bandhua Mukti Morcha* v. *Union of India*, (1984) 3 SCC 161 : 1984 SCC (L&S) 389; *Chhetriya Pardushan Mukti Sangharsh Samiti* v. *State of U.P.*, (1990) 4 SCC 449; *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584, *relied on*

Infringement of spheres of legislature and executive and defamatory allegations

Court has to strike balance between two conflicting interests: (*i*) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (*ii*) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature.
(Para 14)

Precious time of court wasted

It is depressing to note that on account of trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Though the Supreme

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Court spares no efforts in fostering and developing the laudable concept of PIL and extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet it could not avoid but express its opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death and facing the gallows under untold agony, persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters — government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for the glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly, they lose faith in the administration of our judicial system. (Para 11)

No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. Today people rush to courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in courts and among the public. The time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by the Supreme Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. (Paras 15 and 16)

F. **Constitution of India — Art. 32 — PIL — Standing/Locus standi — Rule for**

A person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. The court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a

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desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs. (Paras 4, 12 and 14)

Janata Dal v. *H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36; *Kazi Lhendup Dorji* v. *Central Bureau of Investigation*, 1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873; *Ramjas Foundation* v. *Union of India*, 1993 Supp (2) SCC 20 : AIR 1993 SC 852; *K.R. Srinivas* v. *R.M. Premchand*, (1994) 6 SCC 620; *S.P. Gupta* v. *Union of India*, 1981 Supp SCC 87; *Jasbhai Motibhai Desai* v. *Roshan Kumar*, (1976) 1 SCC 671; *Fertilizer Corpn. Kamgar Union (Regd.)* v. *Union of India*, (1981) 1 SCC 568; *Subhash Kumar* v. *State of Bihar*, (1991) 1 SCC 598, *relied on*

Sunil Batra (II) v. *Delhi Admn.*, (1980) 3 SCC 488 : 1980 SCC (Cri) 777; *Daya Singh* v. *Union of India*, (1991) 3 SCC 61 : 1991 SCC (Cri) 523, *cited*

G. Constitution of India — Art. 32 — PIL — Maintainability — Service matters — *Duryodhan Sahu case*, (1998) 7 SCC 273, followed as to inadmissibility of PILs in respect of service matters — High Courts exhorted to throw out such matters on the basis of the said decision (Para 16)

Duryodhan Sahu (Dr) v. *Jitendra Kumar Mishra*, (1998) 7 SCC 273 : 1998 SCC (L&S) 1802 : AIR 1999 SC 114, *relied on*

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Advocates who appeared in this case :
Petitioner in person.

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24. (1976) 1 SCC 671, *Jasbhai Motibhai Desai* v. *Roshan Kumar* 360*e-f*

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.— This petition under Article 32 of the Constitution of India (in short "the Constitution") has been filed purportedly in public interest. The prayer in the writ petition is to the effect that the death sentence imposed on one Dhananjay Chatterjee @ Dhana (hereinafter referred to as "the accused") by the Sessions Court, Alipur West Bengal, affirmed by the Calcutta High Court and this Court, needs to be converted to a life sentence because there has been no execution of the death sentence for a long time. Reliance was placed on a Constitution Bench decision of this Court in *Triveniben* v. *State of Gujarat*[1].

2. According to the petitioner, he saw a news item on a TV channel wherein it was shown that the authorities were unaware of the non-execution of the death sentence and, therefore, the condemned prisoner, the accused, had suffered a great degree of mental torture and that itself is a ground for conversion of his death sentence to a life sentence on the basis of the ratio in *Triveniben case*[1]. It needs to be noted here that prayer for conversion of death sentence to life sentence has already been turned down by the Governor of West Bengal and the President of India in February 1994 and June 1994 respectively as stated in the petition. When the matter was placed for admission, we asked the petitioner who appeared in person as to what was his *locus standi* and how a petition under Article 32 is maintainable on such nature of information by which he claims to have come to know of it. His answer was that as a public-spirited citizen of the country, he has a locus to present the petition and when the matter involved life and liberty of a citizen, this Court should not stand on technicalities and should give effect to the ratio in *Triveniben case*[1]. There has been violation of Article 21 of the Constitution and the prolonged delay in execution of sentence is violative of Article 21, so far as the accused is concerned.

3. Reliance was also placed on a few decisions, for example, *Sunil Batra (II)* v. *Delhi Admn.*[2], *S.P. Gupta* v. *Union of India*[3], *Daya Singh* v. *Union of India*[4] and *Janata Dal* v. *H.S. Chowdhary*[5] to substantiate the plea that the petitioner had *locus standi* to present the petition in public interest and this was a genuine public interest litigation.

1 (1989) 1 SCC 678 : 1989 SCC (Cri) 248
2 (1980) 3 SCC 488 : 1980 SCC (Cri) 777
3 1981 Supp SCC 87
4 (1991) 3 SCC 61 : 1991 SCC (Cri) 523
5 (1992) 4 SCC 305 : 1993 SCC (Cri) 36

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4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant or poke one's nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *Janata Dal case*[5] and *Kazi Lhendup Dorji* v. *Central Bureau of Investigation*[6]. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. See *Ramjas Foundation* v. *Union of India*[7] and *K.R. Srinivas* v. *R.M. Premchand*[8].

5. It is necessary to take note of the meaning of the expression "public interest litigation". In *Stroud's Judicial Dictionary*, Vol. 4, 4th Edn., "public interest" is defined thus:

> "*Public interest.*—(1) A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

6. In *Black's Law Dictionary*, 6th Edn., "public interest" is defined as follows:

> "*Public interest.*—Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

6 1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873
7 1993 Supp (2) SCC 20 : AIR 1993 SC 852
8 (1994) 6 SCC 620

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7. In *Janata Dal case*[5] this Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, the Court has laid down as follows: (SCC p. 331)

"*53.* The expression 'litigation' means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows: (SCC p. 334)

"*62.* Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 98 of the said judgment, it has further been pointed out as follows: (SCC pp. 345-46)

"*98.* While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. In subsequent paras of the said judgment, it was observed as follows: (SCC p. 348, para 109)

"*109.* It is thus clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold."

11. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth

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hundreds of millions of rupees and criminal cases in which persons sentenced to death and facing the gallows under untold agony, persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters — government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for the glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly, they lose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches the court is acting *bona fide* and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows:

> "Public interest law is the name that has recently been given to efforts that provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

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14. The court has to be satisfied about: (*a*) the credentials of the applicant; (*b*) the prima facie correctness or nature of information given by him; and (*c*) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests: (*i*) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (*ii*) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra* v. *Prabhu*[9] and *A.P. State Financial Corpn.* v. *Gar Re-Rolling Mills*[10].) No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See *Buddhi Kota Subbarao (Dr)* v. *K. Parasaran*[11].] Today people rush to courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in courts and among the public.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Duryodhan Sahu (Dr)* v. *Jitendra Kumar Mishra*[12] this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to

9 (1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116
10 (1994) 2 SCC 647 : AIR 1994 SC 2151
11 (1996) 5 SCC 530 : 1996 SCC (Cri) 1038 : JT (1996) 7 SC 265
12 (1998) 7 SCC 273 : 1998 SCC (L&S) 1802 : AIR 1999 SC 114

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possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

17. Coming to the facts of the case, it has not been shown as to how and in what manner the accused condemned prisoner is handicapped in not seeking relief, if any, as available in law. The matter pertains to something which happened or not at Kolkata and what the truth about the news was or cause for the delay, even if it be, is not known or ascertained or even attempted to be ascertained by the petitioner before approaching this Court. To a pointed query, the petitioner submitted that the petitioner "may not be aware" of his rights, that except the news he heard he could not say any further and "the respondent State may come and clarify the position". This petition cannot be entertained on such speculative foundations and premises and to make a roving enquiry. Maybe, at times even on certain unconfirmed news but depending upon the gravity or heinous nature of the crime alleged to be perpetrated which would prove to be obnoxious to the avowed public policy, morals and greater societal interests involved, courts have ventured to intervene but we are not satisfied that this could be one such case, on the facts disclosed. It is reliably learnt that a petition with almost identical prayers was filed before the Calcutta High Court by relatives of the accused and the same has recently been dismissed by the High Court.

18. In *Gupta case*[3] it was emphatically pointed out that the relaxation of the rule of *locus standi* in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the court under the guise of a public interest litigant. It has also left the following note of caution: (SCC p. 219, para 24)

> "24. But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting *bona fide* and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

19. In *State of H.P.* v. *A Parent of a Student of Medical College*[13] it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

20. Khalid, J. in his separate supplementing judgment in *Sachidanand Pandey* v. *State of W.B.*[14] (SCC at p. 331) said:

13 (1985) 3 SCC 169
14 (1987) 2 SCC 295

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"Today public-spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the public. They must be above suspicion. (SCC p. 331, para 46)

* * *

Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. (SCC p. 334, para 59)

* * *

I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants. (SCC p. 335, para 61)"

21. Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in *Ramsharan Autyanuprasi* v. *Union of India*[15] was in full agreement with the view expressed by Khalid, J. in *Sachidanand Pandey case*[14] and added that "public interest litigation" is an instrument of the administration of justice to be used properly in proper cases. [See also separate judgment by Pathak, J. (as he then was) in *Bandhua Mukti Morcha* v. *Union of India*[16].]

22. Sarkaria, J. in *Jasbhai Motibhai Desai* v. *Roshan Kumar*[17] expressed his view that the application of a busybody should be rejected at the threshold in the following terms: (SCC p. 683, para 37)

"*37.* It will be seen that in the context of *locus standi* to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (*i*) 'person aggrieved'; (*ii*) 'stranger'; (*iii*) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than

15 1989 Supp (1) SCC 251
16 (1984) 3 SCC 161 : 1984 SCC (L&S) 389
17 (1976) 1 SCC 671

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spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

23. Krishna Iyer, J. in *Fertilizer Corpn. Kamgar Union (Regd.)* v. *Union of India*[18] in stronger terms stated: (SCC p. 589, para 48)

"*48.* If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him."

24. In *Chhetriya Pardushan Mukti Sangharsh Samiti* v. *State of U.P.*[19] Sabyasachi Mukharji, C.J. observed: (SCC p. 452, para 8)

"While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court."

25. In *Union Carbide Corpn.* v. *Union of India*[20] (SCC at p. 610) Ranganath Mishra, C.J. in his separate judgment while concurring with the conclusions of the majority judgment has said thus: (SCC p. 610, para 21)

"I am prepared to assume, nay, concede, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large. Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled."

26. In *Subhash Kumar* v. *State of Bihar*[21] it was observed as follows: (SCC pp. 604-05, para 7)

"Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32 are entertained, it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must

18 (1981) 1 SCC 568
19 (1990) 4 SCC 449
20 (1991) 4 SCC 584
21 (1991) 1 SCC 598

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approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation."

27. In the words of Bhagwati, J. (as he then was) "the courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself" and as Krishna Iyer, J. has pointed out, "the doors of the courts should not be ajar for such vexatious litigants".

28. It will be appropriate at this stage to take note of what this Court felt when dealing with petitions under Article 32 with somewhat similar issues. The petitioner in one case filed a writ petition under Article 32 of the Constitution challenging the order of this Court whereby it had affirmed the conviction of the two accused and confirmed the death sentence for reasons stated in its judgment in *State of Maharashtra* v. *Sukhdev Singh*[22].

29. The writ petition was dismissed holding that a third party has no *locus standi* to challenge the conviction by filing the writ petition under Article 32 of the Constitution. (See *Simranjit Singh Mann* v. *Union of India*[23].)

30. The petitioner there claimed to be a friend of the convicts, and it was held that he had no *locus standi* to move the court under Article 32 of the Constitution. Unless the aggrieved party is a minor or insane or one who is suffering from any other disability which the law recognizes as sufficient to permit another person e.g. next friend, to move the court on his behalf, for example, see Sections 320(4)(*a*), 330(2) read with Sections 335(1)(*b*) and 339 of the Code of Criminal Procedure, 1973 (in short "the Code"). Ordinarily, the aggrieved party has the right to seek redress. Admittedly, it was not the case of the petitioner that the two convicts are minors or insane persons but had argued that since they were suffering from an acute obsession, such obsession amounts to a legal disability which permits the next friend to initiate proceedings under Article 32 of the Constitution.

31. A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognized by the Code or any other law which would permit initiation of proceedings by a third party, be he a friend. It must be remembered that the repercussions of permitting such a third party to challenge the findings of the court can be serious e.g. in the instant case itself the co-accused who have been acquitted by the Designated Court and whose acquittal has been confirmed by this Court would run the risk of a fresh trial and a possible conviction.

22 (1992) 3 SCC 700 : 1992 SCC (Cri) 705 : AIR 1992 SC 2100
23 (1992) 4 SCC 653 : 1993 SCC (Cri) 22 : AIR 1993 SC 280

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32. Similar view was expressed in *Karamjeet Singh* v. *Union of India*[24].

33. It was noted that Article 32, which finds a place in Part III of the Constitution entitled "fundamental rights", provides that the right to move this Court for the enforcement of the rights conferred in that part is guaranteed. It empowers this Court to issue directions or orders or writs for the enforcement of any of the fundamental rights. The petitioner did not seek to enforce any of his fundamental rights nor did he complain that any of his fundamental rights were violated. He sought to enforce the fundamental rights of others, namely, the two condemned convicts who themselves did not complain of their violation. Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognizes as sufficient to permit another person, e.g. next friend, to move the court on his behalf.

34. Unless an aggrieved party is under some disability recognized by law, it would be unsafe and hazardous to allow any third party, be it a member of the Bar, to question the decision against third parties.

35. Neither under the provisions of the Code nor under any other statute is a third-party stranger permitted to question the correctness of the conviction and sentence.

36. Based on the above backgrounds, we do not think this to be a fit case which can be entertained and that too, under Article 32 of the Constitution and is accordingly dismissed, but without costs.

(2004) 3 Supreme Court Cases 363

(BEFORE DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.)

DR B. SINGH .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 122 of 2004† (D. No. 305 of 2004), decided on March 11, 2004

A. Constitution of India — Arts. 32 and 217 — Appointment of High Court judges — Scope of judicial review — Maintainability of PIL challenging appointment of judge — Held, the scope of judicial review in such a matter had been specifically delineated, and did not include bias as a possible ground for impugning an appointment, which was in any case excluded by the element of plurality in the process of decision-making provided for under Art. 217 — Irresponsible public challenges to probity of judges and those under consideration for judgeship strongly deprecated — Imperativeness of stern action against such challenges stressed — Delay in appointment of judges attributed in part to such challenges

24 (1992) 4 SCC 666 : 1993 SCC (Cri) 17 : AIR 1993 SC 284

† Under Article 32 of the Constitution of India

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(1962) 1 SCR 574:AIR 1961 SC 1457

Writ Petitions Nos. 66 & 67/56, 8/60, 77/57, 15/57 & 5/58
(Under Article 32 of the Constitution of India for enforcement of Fundamental Rights)

Petition No. 66 of 1956

DARYAO AND OTHERS . . Petitioners;

Versus

STATE OF U.P. AND OTHERS . . Respondents.

Petition No. 67 of 1956

HURMAT, SON OF SATWA . . Petitioner;

Versus

STATE OF U.P. AND OTHERS . . Respondents.

Petition No. 8 of 1960

MAHENDRA LAL JAINI . . Petitioner;

Versus

STATE OF U.P. AND OTHERS . . Respondents.

Petition No. 77 of 1957

ROOP CHAND . . Petitioner;

Versus

STATE OF PUNJAB AND ANOTHER . . Respondents.

Petition No. 15 of 1957

KRISHAN KUMAR AND OTHERS . . Petitioners;

Versus

UNION OF INDIA AND ANOTHER . . Respondents.

Petition No. 5 of 1958

SADASHIV RAMCHANDRA DALVI . . Petitioner;

Versus

COLLECTOR OF NASIK AND ANOTHER . . Respondents.

The 27th day of March, 1961

Present :

THE HON'BLE JUSTICE P.B. GAJENDRAGADKAR
THE HON'BLE JUSTICE A.K. SARKAR
THE HON'BLE JUSTICE K.N. WANCHOO
THE HON'BLE JUSTICE K.C. DAS GUPTA
THE HON'BLE JUSTICE N. RAJAGOPALA AYYANGAR

For the Petitioners in WPs Nos. 66 & 67 of 1956: Naunit Lal, Advocate.

For Respondent1 in WPs Nos. 66 & 67 of 1956: C.P. Lal Advocate.

For Respondents 3 & 4 in WPs Nos. 66 & 67 of 1956: Bhawani Lal and P.C. Agrawal, Advocates.

For the Petitioner in WP No. 8 of 1960: C.B. Agarwala, Senior Advocate (K.P. Gupta, Advocate, with him).

For the Respondents in: Veda Vyasa, Senior Advocate (C.P. Lal, Advocate, with him).

For the Petitioner in WP No 77 of 1957: Pritam Singh Safeer, Advocate

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For Respondent 1 in WP No 77 of 1957: S.M. Sikri, Advocate General, Punjab, N.S. Bindra, Senior Advocate, D. Gupta, Advocate with them).

For Respondent 2 in WP No. 77 of 1957: Govind Saran Singh, Advocate.

For the Petitioner in WP No. 15 of 1957: A.N. Sinha and Raghunath, Advocates.

For the Respondent in WP No. 15 of 1957: C.K. Daphtary, Solicitor-General for India; N.S. Bindra, Senior Advocate (R.H Dhebar, Advocate, with them).

For the Petitioner in WP No. 5 of 1958: B.R.L. Iyengar, Advocate.

For the Respondents in WP No. 5 of 1958: C.K. Daphtary, Solicitor-General for India (R. Ganapathy Iyer and R.H. Dhebar, Advocates, with him).

The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.— These six writ petitions filed under Article 32 have been placed before the Court for final disposal in a group because though they arise between separate parties and are unconnected with each other a common question of law arises in all of them. The opponents in all these petitions have raised a preliminary objection against the maintainability of the writ petitions on the ground that in each case the petitioners had moved the High Court for a similar writ under Article 226 and the High Court has rejected the said petitions. The argument is that the dismissal of a writ petition filed by a party for obtaining an appropriate writ creates a bar of res judicata against a similar petition filed in this Court under Article 32 on the same or similar facts and praying for the same or similar writ. The question as to whether such a bar of res judicata, can be pleaded against a petition filed in this Court under Article 32 has been adverted to in some of the reported decisions of this Court but it has not so far been fully considered or finally decided; and that is the preliminary question for the decision of which the six writ petitions have been placed together for disposal in a group. In dealing with this group we will set out the facts which give rise to Writ Petition No. 66 of 1956 and decide the general point raised for our decision. Our decision in this writ petition will govern the other writ petitions as well.

2. Petition No. 66 of 1956 alleges that for the last fifty years the petitioners and their ancestors have been the tenants of the land described in Annexure A attached to the petition and that Respondents 3 to 5 are the proprietors of the said land. Owing to communal disturbances in the Western District of Uttar Pradesh in 1947, the petitioners had to leave their village in July, 1947; later in November, 1947, they returned but they found that during their temporary absence Respondents 3 to 5 had entered in unlawful possession of the said land. Since the said respondents refused to deliver possession of the land to the petitioners the petitioners had to file suits for ejectment under Section 180 of the U.P. Tenancy Act, 1939. These suits were filed in June, 1948. In the trial court the petitioners succeeded and a decree was passed in their favour. The said decree was confirmed in appeal which was taken by Respondents 3 to 5 before the learned Additional Commissioner. In pursuance of the appellate decree the petitioners obtained possession of the land through Court.

3. Respondents 3 to 5 then preferred a second appeal before the Board of Revenue under Section 267 of the U.P. Tenancy Act, 1939. On March 29, 1954, the Board allowed the appeal preferred by Respondents 3 to 5 and dismissed the petitioner's suit with respect to the land described in Annexure A, whereas the said respondents' appeal with regard to other lands were dismissed. The decision of the Board was based on the ground that by virtue of the U.P. Zamindary Abolition and Land Reforms (Amendment) Act 16 of 1953 Respondents 3 to 5 had become entitled to the possession of the land.

4. Aggrieved by this decision the petitioners moved the High Court at Allahabad under Article 226 of the Constitution for the issue of a writ of certiorari to quash the said

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judgment. Before the said petition was filed a Full Bench of the Allahabad High Court had already interpreted Section 20 of the U.P. Land Reforms Act as amended by Act 16 of 1953. The effect of the said decision was plainly against the petitioners' contentions, and so the learned advocate who appeared for the petitioners had no alternative but not to press the petition before the High Court. In consequence the said petition was dismissed on March 29, 1955. It appears that Section 20 has again been amended by Section 4 of Act 20 of 1954. It is under these circumstances that the petitioners have filed the present petition under Article 32 on March 14, 1956. It is plain that at the time when the present petition has been filed the period of limitation prescribed for an appeal under Article 136 against the dismissal of the petitioners' petition before the Allahabad High Court had already expired. It is also clear that the grounds of attack against the decision of the Board which the petitioners seek to raise by their present petition are exactly the same as the grounds which they had raised before the Allahabad High Court; and so it is urged by the respondents that the present petition is barred by res judicata.

5. Mr Agarwala who addressed the principal arguments on behalf of the petitioners in this group contends that the principle of res judicata which is no more than a technical rule similar to the rule of estoppel cannot be pleaded against a petition which seeks to enforce the fundamental rights guaranteed by the Constitution. He argues that the right to move the Supreme Court for the enforcement of the fundamental rights which is guaranteed by Article 32(1) is itself a fundamental right and it would be singularly inappropriate to whittle down the said fundamental right by putting it in the straight jacket of the technical rule of res judicata. On the other hand it is urged by the learned Advocate-General of Punjab, who led the respondents, that Article 32(1) does not guarantee to every citizen the right to make a petition under the said article but it merely gives him the right to move this Court by appropriate proceedings, and he contends that the appropriate proceedings in cases like the present would be proceedings by way of an application for special leave under Article 136 or by way of appeal under the appropriate article of the Constitution. It is also suggested that the right to move which is guaranteed by Article 32 (1) does not impose on this Court an obligation to grant the relief, because as in the case of Article 226 so in the case of Article 32 also the granting of leave is discretionary.

6. In support of the argument that it is in the discretion of this Court to grant an appropriate relief or refuse to do so reliance has been placed on the observations made in two reported decisions of this Court. In *Laxmanappa Hanumantappa Jamkhandi* v. *Union of India*[1] this Court held that as there is a special provision in Article 265 of the Constitution that no tax shall be levied or collected except by authority of law, clause 1 of Article 31 must be regarded as concerned with deprivation of property otherwise than by imposition or collection of tax and as the right conferred by Article 265 is not a fundamental right conferred by Part III of the Constitution, it cannot be enforced under Article 32. In other words, the decision was that the petition filed before this Court under Article 32 was not maintainable; but Mahajan, C.J., who spoke for the Court, proceeded to observe that "even otherwise in the peculiar circumstances that have arisen it would not be just and proper to direct the issue of any of the writs the issue of which is discretionary with this Court". The learned Chief Justice has also added that when this position was put to Mr Sen he fairly and rightly conceded that it was not possible for him to combat this position. To the same effect are the observations made by the same learned Chief Justice in *Dewan Bahadur Seth Gopal Das Mohta* v. *Union of India*[2]. It will, however, be noticed that the observations made in both the cases are *obiter*, and, with respect, it would be difficult to treat them as a decision on the question that the issue of an appropriate writ under Article 32 is a matter of discretion, and that even if the petitioner proves his fundamental rights and their unconstitutional infringement this Court nevertheless can refuse to issue an appropriate writ in his favour. Besides, the subsequent decision of this

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Court in *Basheshar Nath* v. *CIT*[3] tender to show that if a petitioner makes out a case of illegal contravention of his fundamental rights he may be entitled to claim an appropriate relief and a plea of waiver cannot be raised against his claim. It is true that the question of res judicata did not fall to be considered in that case but the tenor of all the judgments, which no doubt disclose a difference in approach, seems to emphasise the basic importance of the fundamental rights guaranteed by the Constitution and the effect of the decision appears to be that the citizens are ordinarily entitled to appropriate relief under Article 32, once it is shown that their fundamental rights have been illegally or unconstitutionally violated. Therefore, we are not impressed by the argument that we should deal with the question of the applicability of the rule of res judicata to a petition under Article 32 on the basis that like Article 226 Article 32 itself gives merely a discretionary power to the Court to grant an appropriate relief.

7. The argument that Article 32 does not confer upon a citizen the right to move this Court by an original petition but merely gives him the right to move this Court by an appropriate proceeding according to the nature of the case seems to us to be unsound. It is urged that in a case where the petitioner has moved the High Court by a writ petition under Article 226 all that he is entitled to do under Article 32(1) is to move this Court by an application for special leave under Article 136; that, it is contended, is the effect of the expression "appropriate proceedings"used in Article 32(1). In our opinion, on a fair construction of Article 32(1) the expression "appropriate proceedings" has reference to proceedings which may be appropriate having regard to the nature of the order, direction or writ which the petitioner seeks to obtain from this Court. The appropriateness of the proceedings would depend upon the particular writ or order which he claims and it is in that sense that the right has been conferred on the citizen to move this Court by appropriate proceedings. That is why we must proceed to deal with the question of res judicata on the basis that a fundamental right has been guaranteed to the citizen to move this Court by an original petition wherever his grievance is that his fundamental rights have been illegally contravened.

8. There can be no doubt that the fundamental right guaranteed by Article 32(1) is a very important safeguard for the protection of the fundamental rights of the citizens, and as a result of the said guarantee this Court has been entrusted with the solemn task of upholding the fundamental rights of the citizens of this country. The fundamental rights are intended not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the Constitution, and it is the privilege and the duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by the Constitution itself. It is because of this aspect of the matter that in *Romesh Thappar* v. *State of Madras*[4] in the very first year after the Constitution came into force, this Court rejected a preliminary objection raised against the competence of a petition filed under Article 32 on the ground that as a matter of orderly procedure the petitioner should first have resorted to the High Court under Article 226, and observed that "this Court is thus constituted the protector and guarantor of the fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights". Thus the right given to the citizen to move this Court by a petition under Article 32 and claim an appropriate writ against the unconstitutional infringement of his fundamental rights itself is a matter of fundamental right, and in dealing with the objection based on the application of the rule of res judicata this aspect of the matter has no doubt to be borne in mind.

9. But, is the rule of res judicata merely a technical rule or is it based on high public

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policy? If the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of res judicata as indicated in Section 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32.

10. In considering the essential elements of res judicata one inevitably harks back to the judgment of Sir William B. Hale in the leading *Duchess of Kingston case*[5]. Said Sir William B. Hale "from the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true: First, that the judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another court; Secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another court for a different purpose". As has been observed by Halsbury, "the doctrine of res judicata is not a technical doctrine applicable only to records;' it is a fundamental doctrine of all courts that there must be an end of litigation.[6]" Halsbury also adds that the doctrine applies equally in all courts, and it is immaterial in what court the former proceeding was taken, provided only that it was a Court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause" (p. 187, paragraph 362). "Res judicata", it is observed in *Corpus Juris*, "is a rule of universal law pervading every well regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — *interest republicae ut sit finis litium;* the other, the hardship on the individual that he should be vexed twice for the same cause — *nemo debet bis vexari pro eadem causa*"[7]. In this sense the recognised basis of the rule of *res judicata* is different from that of technical estoppel. "Estoppel rests on equitable principles and res judicata rests on maxims which are taken from the Roman Law"[8]. Therefore, the argument that res judicata is a technical rule and as such is irrelevant in dealing with petitions under Article 32 cannot be accepted.

18. The same question can be considered from another point of view. If a judgment has been pronounced by a court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed: "subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is

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conclusive evidence against all the world of its existence, date and legal consequences"[9]. Similar is the statement of the law in *Corpus Juris*: "the doctrine of estoppel by judgment does not rest on any superior authority of the court rendering the judgment, and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction[10]". This rule is subject to the limitation that the judgment in the former action must have been rendered by a court or tribunal of competent jurisdiction[10]. "It is, however, essential that there should have been a judicial determination of rights in controversy with a final decision thereon"[11]. In other words, an original petition for a writ under Article 32 cannot take the place of an appeal against the order passed by the High Court in the petition filed before it under Article 226. There can be little doubt that the jurisdiction of this Court to entertain applications under Article 32 which are original cannot be confused or mistaken or used for the appellate jurisdiction of this Court which alone can be invoked for correcting errors in the decisions of High Courts pronounced in writ petitions under Article 226. Thus, on general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Article 32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end the court has pronounced its judgment or decision. Such a decision pronounced be a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res judicata should not be allowed to be invoked cannot be sustained.

19. This Court had occasion to consider the application of the rule of res judicata to a petition filed under Article 32 in *M.S.M. Sharma* v. *Dr Shree Krishna Sinha*[12]. In that case the petitioner had moved this Court under Article 32 and claimed an appropriate writ against the Chairman and the Members of the Committee of Privileges of the State Legislative Assembly. The said petition was dismissed. Subsequently he filed another petition substantially for the same relief and substantially on the same allegations. One of the points which then arose for the decision of this Court was whether the second petition was competent, and this Court held that it was not because of the rule of res judicata. It is true that the earlier decision on which res judicata was pleaded was a decision of this Court in a petition filed under Article 32 and in that sense the background of the dispute was different, because the judgment on which the plea was based was a judgment of this Court and not of any High Court. Even so, this decision affords assistance in determining the point before us. In upholding the plea of res judicata this Court observed that the question determined by the previous decision of this Court cannot be reopened in the present case and must govern the rights and obligations of the parties which are substantially the same. In support of this decision Sinha, C.J., who spoke for the Court, referred to the earlier decision of this Court in *Raj Lakshmi Dasi* v. *Banamali Sen*[13] and observed that the principle underlying res judicata is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though the subject-matter of the dispute was not exactly the same in the two proceedings. We may add incidentally that the Court which tried the earlier proceedings in the case of *Raj Lakshmi Dasi*[13] was a court of exclusive jurisdiction. Thus this decision establishes the principle that the rule of res judicata can be invoked even against a petition filed under Article 32.

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20. We may at this stage refer to some of the earlier decisions of this Court where the present problem was posed but not finally or definitely answered. In *Janardan Ready* v. *State of Hyderabad*[14] it appeared that against the decision of the High Court a petition for special leave had been filed but the same had been rejected and this was followed by petitions under Article 32. These petitions were in fact entertained though on the merits they were dismissed, and in doing so it was observed by Fazl Ali, J., who delivered the judgment of the Court, that "it may, however, be observed that in this case we have not considered it necessary to decide whether an application under Article 32 is maintainable after a similar application under Article 226 is dismissed by the High Court, and we reserve our opinion on that question". To the same effect are the observations made by Mukherjea, J., as he then was, in *Syed Qasim Razvi* v. *State of Hyderabad*[15].

21. On the other hand, in *Bhagubhai Dullabhabhai Bhandari* v. *District Magistrate, Thana*[16] the decision of the High Court was treated as binding between the parties when it was observed by reference to the said proceedings that "but that is a closed chapter so far as the Courts including this court also are concerned inasmuch as the petitioner's conviction stands confirmed as a result of the refusal of this Court to grant him special leave to appeal from the judgment of the Bombay High Court". In other words, these observations seem to suggest that the majority view was that if an order of conviction and sentence passed by the High Court would be binding on the convicted person and cannot be assailed subsequently by him in a proceeding taken under Article 321 when it appeared that this Court had refused special leave to the said convicted person to appeal against the said order of conviction.

22. The next question to consider is whether it makes any difference to the application of this rule that the decision on which the plea of res judicata is raised is a decision not of this Court but of a High Court exercising its jurisdiction under Article 226. The argument is that one of the essential requirements of Section 11 of the Code of Civil Procedure is that the Court which tries the first suit or proceeding should be competent to try the second suit or proceeding, and since the High Court cannot entertain an application under Article 32 its decision cannot be treated as res judicata for the purpose of such a petition. It is doubtful if the technical requirement prescribed by Section 11 as to the competence of the first Court to try the subsequent suit is an essential part of the general rule of res judicata; but assuming that it is, in substance even the said test is satisfied because the jurisdiction of the High Court in dealing with a writ petition filed under Article 226 is substantially the same as the jurisdiction of this Court in entertaining an application under Article 32. The scope of the writs, orders or directions which the High Court can issue in appropriate cases under Article 226 is concurrent with the scope of similar writs, orders or directions which may be issued by this Court under Article 32. The cause of action for the two applications would be the same. It is the assertion of the existence of a fundamental right and its illegal contravention in both cases and the relief claimed in both the cases is also of the same character. Article 226 confers jurisdiction on the High Court to entertain a suitable writ petition, whereas Article 32 provides for moving this Court for a similar writ petition for the same purpose. Therefore, the argument that a petition under Article 32 cannot be entertained by a High Court under Article 226 is without any substance; and so the plea that the judgment of the High Court cannot be treated as res judicata on the ground that it cannot entertain a petition under Article 32 must be rejected.

23. It is, however, necessary to add that in exercising its jurisdiction under Article 226 the High Court may sometimes refuse to issue an appropriate writ or order on the ground that the party applying for the writ is guilty of laches and in that sense the issue of a high prerogative writ may reasonably be treated as a matter of discretion. On the other hand, the right granted to a citizen to move this Court by appropriate proceedings under Article

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32(1) being itself a fundamental right this Court ordinarily may have to issue an appropriate writ or order provided it is shown that the petitioner has a fundamental right which has been illegally or unconstitutionally contravened. It is not unlikely that if a petition is filed even under Article 32 after a long lapse of time considerations may arise whether rights in favour of third parties which may have arisen in the meanwhile could be allowed to be affected, and in such a case the effect of laches on the part of the petitioner or of his acquiescence may have to be considered; but, ordinarily if a petitioner makes out a case for the issue of an appropriate writ or order he would be entitled to have such a writ or order under Article 32 and that may be said to constitute a difference in the right conferred on a citizen to move the High Court under Article 226 as distinct from the right conferred on him to move this Court. This difference must inevitably mean that if the High Court has refused to exercise its discretion on the ground of laches or on the ground that the party has an efficacious alternative remedy available to him then of course the decision of the High Court cannot generally be pleaded in support of the bar of res judicata. If, however, the matter has been considered on the merits and the High Court has dismissed the petition for a writ on the ground that no fundamental right is proved or its breach is either not established or is shown to be constitutionally justified there is no reason why the said decision should not be treated as a bar against the competence of a subsequent petition filed by the same party on the same facts and for the same reliefs under Article 32.

24. In this connection reliance has been placed on the fact that in England habeas corpus petitions can be filed one after the other and the dismissal of one habeas corpus petition is never held to preclude the making of a subsequent petition for the same reason. In our opinion, there is no analogy between the petition for habeas corpus and petitions filed either under Article 226 or under Article 32. For historical reasons the writ for habeas corpus is treated as standing in a category by itself; but, even with regard to a habeas corpus petition it has now been held in England in *Re Hastings (No. 2)*[17] that "an applicant for a writ of habeas corpus in a criminal matter who has once been heard by a Divisional Court of the Queen's Bench Division is not entitled to be heard a second time by another Divisional Court in the same Division, since a decision of a Divisional Court of the Queen's Bench Division is equivalent to the decision of all the judges of the Division, just as the decision of one of the old common law courts sitting in banc was the equivalent of the decision of all the judges of that Court." Lord Parker, C.J., who delivered the judgment of the Court, has elaborately examined the historical genesis of the writ, several dicta pronounced by different Judges in dealing with successive writ petitions, and has concluded that "the authorities cannot be said to support the principle that except in vacation an applicant could go from Judge to Judge as opposed to going from court to court"(p. 633), so that even in regard to a habeas corpus petition it is now settled in England that an applicant cannot move one Divisional Court of the Queen's Bench Division after another. The said decision has been subsequently applied in *Re Hastings (No. 3)*[18] to a writ petition filed for habeas corpus in a Divisional Court of the Chancery Division. In England, technically an order passed on a petition for habeas corpus is not regarded as a judgment and that places the petitions for habeas corpus in a class by themselves. Therefore we do not think that the English analogy of several habeas corpus applications can assist the petitioners in the present case when they seek to resist the application of res judicata to petitions filed under Article 32. Before we part with the topic we would, however, like to add that we propose to express no opinion on the question as to whether repeated applications for habeas corpus would be competent under our Constitution. That is a matter with which we are not concerned in the present proceedings.

25. There is one more argument which still remains to be considered. It is urged that the remedies available to the petitioners to move the High Court under Article 226 and this

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Court under Article 32 are alternate remedies and so the adoption of one remedy cannot bar the adoption of the other. These remedies are not exclusive but are cumulative and so no bar of res judicata can be pleaded when a party who has filed a petition under Article 226 seeks to invoke the jurisdiction of this Court under Article 32. In support of this contention reliance has been placed on the decision of the Calcutta High Court in *Mussammat Gulab Koer* v. *Badshah Bahadur*[19]. In that case a party who had unsuccessfully sought for the review of a consent order on the ground of fraud brought a suit for a similar relief and was met by a plea of res judicata. This plea was rejected by the Court on the ground that the two remedies though co-existing were not inconsistent so that when a party aggrieved has had recourse first to one remedy it cannot be precluded from subsequently taking recourse to the other. In fact the judgment shows that the Court took the view that an application for review was in the circumstances an inappropriate remedy and that the only remedy available to the party was that of a suit. In dealing with the question of res judicata the Court examined the special features and conditions attaching to the application for review, the provisions with regard to the finality of the orders passed in such review proceedings and the limited nature of the right to appeal provided against such orders. In the result the Court held that the two remedies cannot be regarded as parallel and equally efficacious and so no question of election of remedies arose in those cases. We do not think that this decision can be read as laying down a general proposition of law that even in regard to alternate remedies if a party takes recourse to one remedy and a contest arising therefrom is tried by a Court of competent jurisdiction and all points of controversy are settled the intervention of the decision of the Court would make no difference at all. In such a case the point to consider always would be what is the nature of the decision pronounced by a Court of competent jurisdiction and what is its effect. Thus considered there can be no doubt that if a writ petition filed by a party has been dismissed on the merits by the High Court the judgment thus pronounced is binding between the parties and it cannot be circumvented or by-passed by his taking recourse to Article 32 of the Constitution. Therefore, we are not satisfied that the ground of alternative remedies is well founded.

26. We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Article 32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a

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dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Article 32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other. It is in the light of this decision that we will now proceed to examine the position in the six petitions before us.

27. In Petition No. 66 of 1956 we have already seen that the petition filed in the High Court was on the same allegations and was for the same relief. The petitioners had moved the High Court to obtain a writ of certiorari to quash the decision of the Revenue Board against them, and when the matter was argued before the High Court in view of the previous decisions of the High Court their learned counsel did not press the petition. In other words, the points of law raised by the petition were dismissed on the merits. That being so, it is a clear case where the writ petition has been dismissed on the merits, and so the dismissal of the writ petition creates a bar against the competence of the present petition under Article 32. The position with regard to the companion Petition No. 67 of 1956, is exactly the same. In the result these two petitions fail and are dismissed; there would be no order as to costs.

28. In Writ Petition No. 8 of 1960 the position is substantially different. The previous petition for a writ filed by the petitioner (No. 68 of 1952) in the Allahabad High Court was withdrawn by his learned counsel and the High Court therefore dismissed the said petition with the express observation that the merits had not been considered by the High Court in dismissing it and so no order as to costs was passed. This order dismissing the writ petition as withdrawn which was passed on February 3, 1955, cannot therefore support the plea of res judicata against the present petition. It appears that a co-lessee of the petitioner had also filed a similar Writ Petition, No. 299 of 1958. On this writ petition the High Court no doubt made certain observations and findings but in the end it came to the conclusion that a writ petition was not the proper proceeding for deciding such old disputes about title and so it left the petitioner to obtain a declaration about title from a competent civil or revenue court in a regular suit. Thus it would be clear that the dismissal of this writ petition (on 17-3-1958) also cannot constitute a bar against the competence of the present writ petition. The preliminary objection raised against this writ petition is therefore rejected and it is ordered that this writ petition be set down for hearing before a Constitution Bench.

29. In Petition No. 77 of 1957 the petitioner has stated in paragraph 11 of his petition that he had moved the High Court of Punjab by a writ petition under Articles 226 and 227 but the same was dismissed in limine on July 14, 1957. It is not clear from this statement whether any speaking order was passed on the petition or not. It appears that the petitioner further filed an application for review of the said order under Order 47, Rule 1 read with Section 151 of the Code but the said application was also heard and dismissed in limine on March 1, 1957. It is also not clear whether a speaking order was passed on this application or not. That is why, on the material as it stands it is not possible for us to deal with the merits of the preliminary objection. We would accordingly direct that the petitioner should- file the two orders of dismissal passed by the Punjab High Court. After the said orders are filed this petition may be placed for hearing before the Constitution Bench and the question of res judicata may be considered in the light of our decision in the present group.

30. In Petition No. 15 of 1957 initially we had a bare recital that the writ petition made by the petitioner in the Punjab High Court had been dismissed. Subsequently, however, the

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said order itself has been produced and it appears that it gives no reasons for dismissal. Accordingly we must hold that the said order does not create a bar of res judicata and so the petition will have to be set down for hearing on the merits.

31. In Writ Petition No. 5 of 1958 the position is clear. The petitioner had moved the Bombay High Court for an appropriate writ challenging the order of the Collector in respect of the land in question. The contentions raised by the petitioner were examined in the light of the rejoinder made by the Collector and substantially the petitioner's case was rejected. It was held by the High Court that the power conferred on the State Government by Section 5(3) of the impugned Act, the Bombay Service Inam (Useful to the Community) Abolition Act, 1953, was not arbitrary nor was its exercise in this particular case unreasonable or arbitrary. The High Court also held that the land of the petitioner attracted the relevant provisions of the said impugned statute. Mr Ayyangar for the petitioner realised the difficulties in his way, and so he attempted to argue that the contentions which he wanted to raise in his present petition are put in a different form, and in support of this argument he has invited our attention to grounds 8 and 10 framed by him in paragraph X of the petition. We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same. Therefore the decision of the High Court pronounced by it on the merits of the petitioner's writ petition under Article 226 is a bar to the making of the present petition under Article 32. In the result this writ petition fails and is dismissed. There would be no order as to costs.

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[1] (1955) 1 SCR 769 at pp. 772, 773

[2] (1955)1 SCR 773 at p. 776

[3] (1959) Supp (1) SCR 528

[4] (1950) SCR 594

[5] 2 Smith Lead Cas 13 Ed. pp. 644, 645

[6] Halsbury's Laws of England, 3rd Edn., Vol. 15, paragraph 357, p. 185

[7] Corpus Juris, Vol. 34, p.743

[8] Ibid p. 745

[9] Halsbury's Laws of England, 3rd Edn., Vol. 22, p. 780, paragraph 1660

[10] Corpus Juris Secundum, Vol. 50 (Judgments), p. 603

[11] Ibid p. 608

[12] AIR 1960 SC 1186

[13] (1953) SCR 154

[14] (1951) SCR 344 at p. 370

[15] (1953) SCR 589

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[16] (1956) SCR 533

[17] (1958) 3 All ER QBD 625

[18] (1959) 1 All ER Ch D 698

[19] (1908-09) 13 CWN 1197

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(1961) 1 SCR 96:AIR 1960 SC 1186

Petition under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

PANDIT M.S.M. SHARMA . . Appellant;

Versus

DR SHREE KRISHNA SINHA AND OTHERS . . Respondent.

Petition No. 176 of 1959, decided on 1st day of August, 1960.

Present:

THE HON'BLE CHIEF JUSTICE B.P. SINHA
THE HON'BLE JUSTICE JAFER IMAM
THE HON'BLE JUSTICE P.B. GAJENDRAGADKAR
THE HON'BLE JUSTICE A.K. SARKAR
THE HON'BLE JUSTICE K. SUBBA RAO
THE HON'BLE JUSTICE K.N. WANCHOO
THE HON'BLE JUSTICE K.C. DAS GUPTA
THE HON'BLE JUSTICE J.C. SHAH

For the Petitioner: Basudeva Prasad, M.K. Ramamurthi, K.N. Keshwa and R. Mahalingier.

For the Respondents: Lal Narain Sinha, B.K.P Sinha, a L.S. Sinha and S.P. Verma.

The Judgment of the Court was delivered by

SINHA, C.J.— By this petition under Article 32 of the Constitution the petitioner raises almost the same controversy as had been done in Writ Petition No. 122 of 1958, which was heard and determined by this Court by its judgment dated December 12, 1958, and by Writ Petition No. 106 of 1959, which was heard by this Court on November 10, 11 and 12, 1959, but which did not reach the stage of judgment by this Court, inasmuch as the petitioner's Advocate requested the Court to permit him to withdraw the petition and the Court allowed the prayer and permitted the petitioner to withdraw the petition. In each of these petitions the petitioner, who is a journalist by profession and is functioning as the Editor of *The Searchlight*, an English daily newspaper published from Patna in the State of Bihar, impugned the validity of the proceedings before the Committee of Privileges and prayed for restraining the opposite party, namely, the Chief Minister of Bihar as Chairman of the Committee of Privileges, Bihar Legislative Assembly, Committee of Privileges and the Secretary of the Bihar Legislative Assembly, from proceeding against the petitioner for the publication in its issue dated May 31, 1957, of *The Searchlight* an account of the debate in the Legislative Assembly, Bihar, on May 30, 1957.

2. The facts of the case have been stated in great detail in the majority judgment of this Court delivered by S.R. Das, C.J., in *M.S.M. Sharma* v. *Sri Krishna Sinha*[1]. In the opening paragraph of this Court's judgment aforesaid, the parties before the Court have been enumerated and the anomaly pointed out. This Court held in effect that under Article 194 (3) of the Constitution, a House of a Legislature of a State has the same powers, privileges and immunities as the House of Commons of the Parliament of the United Kingdom had at the commencement of the Constitution. The House of Commons at the relevant date had the power or privilege of prohibiting the publication of even a true and

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faithful report of proceedings of the House and had a fortiori the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debate or proceedings. The powers or privileges of a House of State Legislature are the same as those of the House of Commons in those matters until Parliament or a State Legislature, as the case may be, may by law define those powers or privileges. Until that event has happened the powers, privileges and immunities of a House of Legislature of a State or of its members and committees are the same as those of the House of Commons at the date of commencement of our Constitution. This Court also expressed the view that Legislatures in this country like the House of Commons will no doubt appreciate the benefit of publicity and will not exercise those powers, privileges and immunities, except in gross cases. The minority judgment delivered by Subba Rao, J., on the other hand, expressed the view that at the relevant date the House of Commons, even as the Legislatures in this country, had no privilege to prevent the publication of a correct and faithful report of the proceedings of those legislatures, except those of secret sessions, and had only a limited privilege to prevent mala fide publication of garbled, unfaithful or expunged reports of the proceedings. He also held that the petitioner had the fundamental right to publish the report of the proceedings of the Legislature. In the result, this Court, in view of the judgment of the majority, dismissed the petition, but made no order as to costs. This Court further held that the Assembly of Bihar was entitled to take proceedings for breach of its privileges and it was for the House itself to determine whether there had in fact been any breach of any of its privileges.

3. After Writ Petition No. 122 of 1958 had thus ended, the petitioner again moved this Court under Article 32 of the Constitution. That case was registered as Writ Petition No. 106 of 1959. On January 5, 1959, the petitioner received a notice that the case of breach of privilege against him would be considered by the Committee of Privileges of the Assembly on February 3, 1959. That hearing was postponed from date to date, until in August, 1959, the petitioner filed his petition under Article 32 of the Constitution. He contended in that petition that, as a citizen of India, the petitioner had the fundamental right under Article 19(1)(*a*) of the Constitution to freedom of speech and expression which included the freedom of publication and circulation and that the Legislature of the State of Bihar could not claim any privilege contrary to the right thus claimed. In effect, it was contended that the privilege conferred on the Legislature of a State by Article 194(3) of the Constitution was subject to the fundamental right of a citizen contained in Article 19 (1)(*a*). It was also contended that the first respondent, the Chief Minister of Bihar, who, it was alleged, had control over the majority of the members of the Bihar Legislative Assembly and of the Committee of Privileges, was proceeding mala fide in getting the proceedings instituted against the petitioner for alleged breach of the privilege of the House. Though not in terms, but in effect, the points raised in this petition were a reiteration of those already determined by this Court in its judgment aforesaid of December 12, 1958. The prayer made in the petition was that the proceedings of the Committee of Privileges at its meeting held on August 10, 1958, might be quashed and the respondents restrained by a writ in the nature of a writ of prohibition from proceeding against the petitioner in respect of publication aforesaid of the proceedings of the Bihar Legislative Assembly of May 30, 1957. After the petitioner had made his writ application to this Court as aforesaid, the Bihar Legislative Assembly reconstituted the Committee of Privileges of the Assembly, and on that very date a member of the Legislative Assembly sought to move a motion in that Assembly for revival and re-reference of the matter of the alleged breach of privilege by the petitioner. Some members of the Bihar Legislative Assembly objected to the motion being moved and the Speaker of the Assembly deferred giving his ruling on that objection. At the instance of some of the members of the Assembly, the Speaker of the Assembly referred two questions to the Advocate-General of Bihar for his opinion on the floor of the House on October 20, 1959, namely, (1) whether it

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was open to the Assembly to debate on an issue which might be sub judice in view of the writ petition aforesaid filed by the petitioner in the Supreme Court under Article 32; and (2) whether the matter which was dead by reason of prorogation of the House several times could be legally revived and restored. On October 20, 1959, the Advocate-General of Bihar attended the House and gave his opinion, which it is not relevant to state here. The Writ Petition, 106 of 1959, was heard in part and allowed to be withdrawn, as indicated above, on November 12, 1959.

4. On November 24, 1959, the petitioner received a fresh notice from the Secretary of the Legislative Assembly, opposite party No. 3, calling upon the petitioner to show cause on or before December 1, 1959, why appropriate action should not be recommended against him for a breach of the privilege of the Speaker and the Assembly. The petitioner again instituted proceedings under Article 32 of the Constitution complaining that the motion adopted by the Committee of Privileges of the Bihar Legislative Assembly at its meeting held on November 23, 1959, amounted to an abridgement of his fundamental right of speech and expression guaranteed under Article 19(1)(*a*) of the Constitution and was an "illegal and mala fide threat to the petitioner's personal liberty in violation of Article 21 of the Constitution of India and that the Committee of Privileges, Respondent 2 had no jurisdiction or authority to proceed against the petitioner as threatened by the notice aforesaid".

5. The grounds of attack raise substantially the same questions that were agitated on the previous occasions in this Court. It was contended before us that the petitioner, as a citizen of India, had the fundamental right of freedom of speech and expression which included the freedom of obtaining the earliest and most correct intelligence of the events of the time including the proceedings of a Legislature and publishing the same and that no Legislature of a State could claim a privilege so as to curtail that right. It was, therefore, contended that the majority decision of this Court in *Pt. M.S.M. Sharma* v. *Sri Krishna Sinha*[1] was wrong. In this connection it was also contended that the rule of construction adopted by this Court in its previous decision had been wrongly applied. It was further contended that even if the House of a State Legislature had the same powers, privileges and immunities as those of the House of Commons, those will be only such as were being actually exercised at the date of the commencement of the Constitution and the right to prevent publication of its proceedings was not one of those powers, privileges or immunities. An appeal was also made to Article 21 of the Constitution and it was contended that no citizen could be deprived of his personal liberty, except in accordance with the procedure established by law. Hence, it was further contended that the mala fide act of Respondents 1 and 2 calling upon the petitioner to show cause was a threat to his fundamental right, and, finally, it was contended that after several prorogations, the previous proceedings for breach of privilege were dead and the House of the Assembly had, therefore, no power or jurisdiction to issue the fresh notice in accordance with the motion of November 23, 1959, reviving the proceedings.

6. It will thus appear that in the present proceedings also the very same questions which were discussed and decided in Writ Petition No. 122 of 1958 are sought to be raised once again. In effect, it is sought to be argued that the previous decision of this Court has proceeded on a wrong appreciation of the legal position. In short, it is insisted that the petitioner has the fundamental right of publishing the proceedings of the Bihar Legislature and that the Legislature has no power to restrict or control the publication of its proceedings.

7. The Government Advocate of Bihar, on behalf of the opposite party, has contended, in the first instance, that the present writ petition against the parties, namely, the Chairman

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and the Members of the Committee of Privileges, Respondents 1 and 2, is barred by the principle of res judicata and, therefore, not maintainable. His contention also is that the writ cannot issue either against an individual member or against the House of the Legislature as a whole in respect of what has been done by it in exercise of its privilege of prohibiting or, at any rate, controlling the publication of its proceedings.

8. On behalf of the petitioner it was contended by Mr Basudeva Prasad that Respondent 2, the Committee of Privileges, has been reconstituted as aforesaid, after the first decision of this Court which is sought to be availed of as res judicata and that therefore the rule of res judicata is inapplicable. In this connection it may be pointed out that in Writ Petition No. 122 of 1958, Sri Krishna Sinha, Chief Minister of Bihar, was impleaded as opposite party No. 1 in his capacity as the Chairman of the Committee of Privileges of the Bihar Legislative Assembly and opposite party No. 2 was cited as Committee of Privileges, Bihar Legislative Assembly, without any names being given. In the present writ petition, opposite party No. 1 is the same. Opposite party No. 2 is impleaded as the (New) Committee of Privileges of Bihar Legislative Assembly and then a number of names are given including that of Dr Sri Krishna Sinha, the Chief Minister, as Chairman. Would it make any difference that though opposite party No. 2 is the Committee of Privileges, its personnel is different from that of the Committee of Privileges constituted as it was in 1958? In our opinion, it does not make any difference. So long as the Assembly remains the same it is open to the Assembly to reconstitute its Committees according to the exigencies of the business of the Assembly. The Committee of Privileges is one of the agencies through which the Assembly has to transact its business. It is really the Assembly as a whole which is proceeding against the petitioner in purported exercise of its powers, privileges and immunities as held by this Court in its judgment in Writ Petition No. 122 of 1958. This Court has laid it down in the case of *Raj Lakshmi Dasi* v. *Banamali Sen*[2] that the principle underlying *res judicata* is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though the subject-matter of the dispute was not exactly the same in the two proceedings. In that case the rule of *res judicata* was applied to litigation in land acquisition proceedings. In that case the general principles of law bearing on the rule of *res judicata*, and not the provisions of Section 11 of the Code of Civil Procedure, were applied to the case. The rule of *res judicata* is meant to give finality to a decision arrived at after due contest and after hearing the parties interested in the controversy. There cannot be the least doubt that, though *eo nomine* opposite party No. 2 were not the same, but there is no escape from the conclusion that the Committee of Privileges is the same Committee irrespective of its personnel at a given time so long as it was a Committee constituted by the same Legislative Assembly. The question decided by this Court on the previous occasion was substantially a question affecting the whole Legislature of the State of Bihar and was of general importance and did not depend upon the particular constitution of the Committee of Privileges. It cannot, therefore, be said that the question decided by this Court on the previous occasion had not been fully debated and had not been decided after due deliberation. That there was difference of opinion and one of the Judges constituting the Court held another view only shows that there was room for difference of opinion. It was a judgment of this Court which binds the petitioner as also the Legislative Assembly of Bihar. For the application of the general principles of *res judicata*, it is not necessary to go into the question whether the previous decision was right or wrong.

9. In our opinion, therefore, the questions determined by the previous decision of this Court cannot be reopened in the present case and must govern the rights and obligations of the parties which, as indicated above, are substantially the same. It is manifest, therefore, that the petitioner has no fundamental right which is being threatened to be

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infringed by the proceedings taken by the opposite party.

10. It now remains to consider the other subsidiary questions raised on behalf of the petitioner. It was contended that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance with law. There are two answers to this contention, firstly, that according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business. Possibly, a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for interference by this Court under Article 32 of the Constitution. Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere non- compliance with rules of procedure cannot be a ground for issuing a writ under Article 32 of the Constitution vide *Janardan Reddy* v. *State of Hyderabad*[3].

11. It was also sought to be argued that the subject-matter of the proceedings in contempt, whatever it was, took place more than three years ago, and that, therefore, it has become much too stale for proceeding against the petitioner in contempt. In our opinion, this is also a matter within the jurisdiction of the legislature which must decide whether or not it was recent enough to be taken serious notice of, or whether any punishment in the event of the petitioner being found guilty is called for. These are matters with which this Court is in no way concerned. Mr Lal Narain Sinha, the Government Advocate of Bihar, who appeared on behalf of the respondents, informed the Court that the Legislature was interested more in the vindication of its constitutional rights than in inflicting any punishment on the petitioner. Hence, no more need be said on this aspect of the matter.

12. It remains to consider one other point sought to be made on behalf of the petitioner that the Assembly had no power to proceed against the petitioner for breach of privilege in May, 1957 when we know as a fact that the Assembly was prorogued several times between May 31, 1957 and November 23, 1959. In our opinion, there is no substance in this contention, for the simple reason that the prorogation of the Assembly does not mean its dissolution. The House remains the same; only its sessions are interrupted by prorogation of the House according to the exigencies of public demands on the time and attention of the members of the Assembly and the volume of business of the Assembly itself. In this connection reliance was placed on the following passage in *May's Parliamentary Practice*, 16th Edn., p. 279:

"The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed, except impeachments by the Commons and appeals before the House of Lords. Every bill must therefore be renewed after a prorogation, as if it

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were introduced for the first time."

13. The observations quoted above do not support the extreme contention raised on behalf of the petitioner that the proceedings in contempt are dead for all time. The effect of the prorogation only is to interrupt the proceedings which are revived on a fresh motion to carry on or renew the proceedings. In this case, it is not necessary to pronounce upon the question whether dissolution of the House necessarily has the effect of completely wiping out the contempt or the proceedings relating thereto.

14. In our opinion, for the reasons given above, no grounds have been made out for the exercise by this Court of its powers under Article 32 of the Constitution. The petition is accordingly dismissed. There will be no order as to costs.

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[1] (1959) Supp 1 SCR 806

[2] (1953) SCR 154

[3] (1951) SCR 344

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meet the same. It is not any legal plea that could be raised at the stage of second appeal. It should be a substantial question of law. The reasons for permitting the plea to be raised should also be recorded. Thereafter, the opposite party should be given a fair or proper opportunity to meet the same. In the present case, as the extracts from the judgment quoted hereinabove would show, the High Court has totally ignored the mandatory provisions of Section 100 CPC. The High Court proceeded to entertain the new plea and rendered its decision without following the mandatory provisions of Section 100 CPC. On this short ground, we are of the view that the judgment and decree of the High Court dated 30-11-1982 are illegal and in excess of its jurisdiction and so unsustainable and deserve to be set aside. We hereby do so. The appeal is allowed with costs, including advocates' fee which we estimate at Rs 10,000.

(1997) 5 Supreme Court Cases 446

(BEFORE K.S. PARIPOORNAN AND SUJATA V. MANOHAR, JJ.)

SRI RAMDAS MOTOR TRANSPORT LTD. AND OTHERS .. Appellants;

Versus

TADI ADHINARAYANA REDDY AND OTHERS .. Respondents.

Civil Appeal No. 3155 of 1997†, decided on May 1, 1997

A. Constitution of India — Art. 226 — Maintainability of writ petition — Alternative remedy — Writ petition alleging oppression and mismanagement of affairs of a company and seeking to get affairs of the company investigated on ground that Company Law Board was not moving in the matter — Held, forum under Companies Act being available for considering such grievances, resort to writ petition would not be appropriate — Companies Act, 1956, Ss. 397, 398, 234, 235, 237

B. Companies Act, 1956 — Ss. 234, 235, 237 — Central Govt.'s power to appoint Inspector to investigate the affairs of the company — To be exercised after a scrutiny by Registrar or by Company Law Board as the case may be and not merely on the basis of allegations made by shareholders — Department of the Central Govt. dealing with the companies matters is presumed to be an expert body

The first appellant, which was a private limited company, became a public limited company on 1-2-1975 by virtue of Section 43-A of the Companies Act. However, it continued to be a closely held company. Second and third appellants are Chairman-MD and Joint MD respectively of the first appellant company. Some shareholders filed a petition under Sections 397 and 398 of the Companies Act on the ground of oppression of minority shareholders and mismanagement of the affairs of the company by the second and third appellants. In the said petition an injunction was sought to restrain the first appellant company from proceeding with the Rights Issue of its shares. After hearing both the parties, the Company Law Board declined to grant any interim order to this effect. Thereafter the son-in-law of the second

† From the Judgment and Order dated 4-12-1996 of the Andhra Pradesh High Court in W.A. No. 1409 of 1996

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appellant filed another company petition under Sections 397 and 398 and subsequently he filed another company application for appointment of an administrator. During pendency of all these proceedings before the Company Law Board the first respondent filed a writ petition under Article 226 of the Constitution before the High Court alleging financial mismanagement of the company and misappropriation of funds by Appellants 2 and 3 and praying for an investigation into the affairs of the first appellant company by CBI and for action against Appellants 2 and 3. A Single Judge of the High Court held that the writ petition was inappropriate since a forum under the Companies Act was available. But in appeal, a Division Bench entertained the appeal on the ground that the petition raised many serious issues as to falsification of the accounts of a public limited company. It took the view that the acts of the company would jeopardize public interest and therefore, the petition involved wider "public interest" and should be entertained. In the result the Division Bench issued a direction to the Central Government to make its own verification of the allegations in the writ petition. Allowing the appeal with costs quantified at Rs 15,000

Held :

The power to appoint an Inspector to investigate the affairs of a company has to be exercised by the Central Government under Section 235 of the Companies Act after a proper preliminary scrutiny by the Registrar or by the Company Law Board as the case may be. It cannot be instituted simply on the basis of allegations made by one shareholder. The power conferred on the Central Government under Sections 235 and 237(*b*) of the Companies Act shows that unless proper grounds exist for investigation of the affairs of a company, such investigation will not be lightly undertaken. An investigation may seriously damage a company and should not be ordered without proper material gathered in the manner provided in the Companies Act. The power of investigation has been conferred on the Central Government on the faith that it will be exercised in a reasonable manner. The department of the Central Government which deals with companies is presumed to be an expert body in company law matters. Therefore the standard that is prescribed under Section 237(*b*) is not the standard required of an ordinary citizen but that of an expert.

(Para 9)

Rohtas Industries v *S.D. Agarwal*, (1969) 1 SCC 325 : (1969) 1 SCR 108, *relied on*

In the present case an attempt had been made by the first respondent to get the affairs of the company investigated in the manner provided under the Companies Act. Neither the Central Government nor the Company Law Board had been moved by the first respondent in accordance with law for this purpose. Instead of moving the authorities prescribed under the Companies Act the first respondent had chosen to resort to the writ jurisdiction of the High Court for a direction to have the affairs of the company investigated by the CBI. The acts of mismanagement and oppression complained of are similar to those set out in the writ petition before the High Court. The only ground alleged in the writ petition for moving the High Court under Article 226 is that the Company Law Board was not moving in the matter. Under an excuse that the Company Law Board had not yet made an order, a shareholder cannot be allowed to bypass the express provisions of the Companies Act and move the High Court under Article 226. A shareholder has very effective remedies under the Companies Act for prevention of oppression and mismanagement. When such remedies are available, the High Court should not readily entertain a petition under Article 226.

(Paras 10 and 11)

The Division Bench of the High Court directed an investigation into the affairs of the company, bypassing the detailed provisions with in-built safeguards under the Companies Act, designed specially for this purpose. The only ground for

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intervention appears to be "public interest". There is no public interest involved in disputes of the kind referred to in the writ petition. They basically deal with mismanagement of the affairs of the company and oppression of the minority shareholders. The company is only a deemed public limited company. Its shareholding is very closely held. The only other factor referred to in the writ petition to invoke the doctrine of so-called public interest, is the fact that the company had borrowed moneys from public institutions. This is no ground for not availing of the statutory remedies provided under the Companies Act before the appropriate statutory forums which are designed for this very purpose. The well-reasoned judgment of the Single Judge was interfered with in a casual manner. The impugned judgment rests on fragile foundations and reads more like an ipse dixit.

(Para 13)

R-M/C/17887/C

Advocates who appeared in this case :

K. Parasaran, Senior Advocate (A.K. Mylsamy and V. Balachandran, Advocates, with him) for the Appellants;

A.K. Ganguli, Senior Advocate (Nikhil Nayyar and Ms B. Sunita Rao, Advocates, with him) for the Respondents.

Chronological list of cases cited *on page(s)*

1 (1969) 1 SCC 325 : (1969) 1 SCR 108, *Rohtas Industries* v. *S.D. Agarwal* 451*d-e*

The Judgment of the Court was delivered by

SUJATA V. MANOHAR, J.— Leave granted.

2. The first appellant company was established in 1944 as a private limited company under the Companies Act, 1913. It continued as a private limited company under the Companies Act, 1956. However, with effect from 1-2-1975, by virtue of Section 43-A of the Companies Act, 1956, it became a public limited company in view of the fact that the annual turnover of the company was above the prescribed limit. The first appellant company, however, continues to be a closely held company consisting of only 61 shareholders including 11 employees and ex-employees. The second appellant is the Chairman and Managing Director of the first appellant company. The third appellant is the Joint Managing Director of the first appellant company. The main object of the company is to carry on the business of parcel lorry service, manufacture of automobile components and dealership of Telco.

3. It is the case of the appellants that there were disputes between the Managing Director i.e. second appellant, and his son-in-law, Srihari Rao, who was a former Director of the first appellant company and a former Member of Parliament. The disputes started some time in 1993. In 1994, (according to the appellants, at the instigation of Srihari Rao) eight shareholders of the company filed before the Company Law Board, Principal Bench, New Delhi, a company petition bearing CP No. 7 of 1994 under Sections 397 and 398 of the Companies Act, 1956, on the ground of oppression of minority shareholders and mismanagement of the affairs of the company by the second and third appellants. In the said petition an injunction was sought to restrain the first appellant company from proceeding with the Rights Issue of its shares. After hearing both the parties,

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however, the Company Law Board declined to grant any interim order to this effect. The Company Law Board directed the company to file an affidavit with regard to the Rights Issue and to follow the procedure which it had followed earlier for the Rights Issue.

4. Thereafter, Srihari Rao and some others filed before the Company Law Board another Company Petition No. 15 of 1994 under Sections 397 and 398 of the Companies Act, 1956 on the ground of oppression of minority shareholders and mismanagement of the affairs of the company by the second and third appellants. This petition was filed on 7-4-1994. An interim relief was sought from the Company Law Board for supersession of the Board of Directors of the first appellant company and for reconstitution of the Board of Directors. An interim injunction was also sought against Appellants 2 and 3 to restrain them from functioning as Managing Director and Joint Managing Director of the first appellant company. The company petition was listed for hearing on 20-3-1995. It was adjourned at the request of the petitioners therein and thereafter from time to time. The petitioners before the Company Law Board filed an application to receive evidence by affidavit. This application was rejected by the Company Law Board on 17-6-1995. The main petition was thereafter heard from 16-10-1995 onwards.

5. On 12-1-1996 Srihari Rao filed another company application for appointment of an administrator. During the hearing of this application, the petitioners in the said petition took further time for filing a better affidavit in support of their application and the application was adjourned to 4-12-1996. The hearing of the main company petition was adjourned to May 1997 at the instance of the petitioners therein. We have set out these facts as the grievance of the first respondent in his writ petition is that the Company Law Board has failed to pass an order.

6. During the pendency of all these proceedings before the Company Law Board on 5-10-1996 the first respondent filed a writ petition under Article 226 of the Constitution before the High Court of Andhra Pradesh for a writ of mandamus directing Union of India and the Secretary (Finance), Union of India (Respondents 1 and 2 in the writ petition) to forthwith prosecute the present Appellants 2 and 3 in accordance with law. The first respondent has challenged in the writ petition various transactions entered into by the first appellant company relating to purchases and sales. The first respondent has also challenged the correctness of the figures shown in the balance sheet and profit and loss accounts of the first appellant company. According to the first respondent there was misappropriation of the funds of the company by Appellants 2 and 3. It was claimed by the first respondent that this amounts to misappropriation of public funds and that, for the alleged acts of Appellants 2 and 3, the Union of India should be directed to prosecute Appellants 2 and 3. There is a further prayer in the writ petition that the Court should direct an inquiry by the Central Bureau of Investigation into the alleged financial mismanagement of the company and misappropriation of funds by Appellants 2 and 3; that a report should be

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submitted to the Court within four weeks pending the disposal of the writ petition; and on the basis of such report the Court should give further directions. There is also a prayer for the appointment of an interim administrator to take charge of the affairs of the first appellant company. All these prayers relate to the alleged mismanagement of the affairs of the first appellant company by Appellants 2 and 3. In essence, the writ petition under Article 226 prays for an investigation into the affairs of the first appellant company, and for action against Appellants 2 and 3. The interim prayer for an administrator of the company also clearly shows that the main grievance of the first respondent in the writ petition relates to the mismanagement of the affairs of the first appellant company.

7. The Companies Act, 1956 provides for dealing with such grievances against a company and its Board of Directors. Under Section 235 of the Companies Act, 1956 the Central Government may, where a report has been made by the Registrar under Section 234(6) or (7), appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct. Section 234(6) requires the Registrar, in cases where he is of the view, on the basis of information or explanation furnished by the company, or on the basis of the books and papers produced, that the documents together with information and explanation disclose an unsatisfactory state of affairs, or do not disclose a full and fair statement of any matter to which the documents purport to relate, to report in writing the circumstances of the case to the Central Government. Sub-section (7) deals with the Registrar acting on the basis of material placed before him by any contributory or creditor or any other person interested in the business of the company. The Registrar, if he is satisfied that the business of the company is being carried on in fraud of its creditors or persons dealing with the company, or otherwise for a fraudulent or unlawful purpose, may, after giving an opportunity of hearing to the company, by written order call upon the company to furnish in writing any information or explanation in connection with it. If he is satisfied that investigation is required, he may refer the case to the Central Government, whereupon the Central Government could order an investigation under Section 235. The Central Government, therefore, will not readily order an investigation into the affairs of the company unless the Registrar makes a report as set out in Section 235(1) read with Section 234(6) and (7).

8. Under Section 235(2) a power is given to the Company Law Board in case where, inter alia, an application is received from not less than 200 members, or members holding not less than 1/10th of the total voting power in a company, to declare, after giving the parties an opportunity of being heard, that the affairs of the company ought to be investigated by an Inspector or Inspectors. On such a declaration being made, the Central Government shall appoint one or more competent persons as Inspectors to investigate the affairs of the company and to report thereon.

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9. The power, therefore, to appoint an Inspector to investigate the affairs of a company has to be exercised by the Central Government after a proper preliminary scrutiny by the Registrar or by the Company Law Board as the case may be. It cannot be instituted simply on the basis of allegations made by one shareholder. Under Section 237, there is a further power given to the Central Government to appoint Inspectors to investigate the affairs of a company if the company, by a special resolution, or the court, by order declares that such investigation is necessary. Similarly, this may be done if in the opinion of the Company Law Board there are circumstances suggesting that the business of the company is being conducted with the intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose. The Company Law Board may also come to a conclusion that there are circumstances suggesting that the persons concerned in the formation of the company or management of its affairs have been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect. In these circumstances, on the basis of the opinion so framed by the Company Law Board, the Central Government may order an investigation. Neither the Central Government nor the Company Law Board has been moved by the first respondent in accordance with law for this purpose. In the case of *Rohtas Industries* v. *S.D. Agarwal*[1] this Court examined the nature of the power conferred on the Central Government under Section 235 as well as Section 237(*b*) and held that the scheme of these sections makes it clear that unless proper grounds exist for investigation of the affairs of a company, such investigation will not be lightly undertaken. An investigation may seriously damage a company and should not be ordered without proper material gathered in the manner provided in the Companies Act. The power of investigation has been conferred on the Central Government on the faith that it will be exercised in a reasonable manner. The department of the Central Government which deals with companies is presumed to be an expert body in company law matters. Therefore the standard that is prescribed under Section 237(*b*) is not the standard required of an ordinary citizen but that of an expert.

10. In the present case an attempt has been made by the first respondent to get the affairs of the company investigated in the manner provided under the Companies Act. Neither the Central Government nor the Company Law Board has been moved by the first respondent in accordance with law for this purpose. Instead of moving the authorities prescribed under the Companies Act the first respondent has chosen to resort to the writ

1 (1969) 1 SCC 325 : (1969) 1 SCR 108

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jurisdiction of the High Court for a direction to have the affairs of the company investigated by the CBI.

11. Under Section 397 of the Companies Act any member of a company who complains that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members may apply to the Company Law Board for an order under that section. The Company Law Board has wide powers to make such orders as it may think fit to bring an end to the matters complained of. Some of the shareholders of the first appellant company have, in fact, filed petitions under Sections 397 and 398 of the Companies Act before the Company Law Board in which they have asked for similar reliefs including the appointment of an interim administrator. The acts of mismanagement and oppression complained of are similar to those set out in the writ petition before the High Court. The only ground alleged in the writ petition for moving the High Court under Article 226 is that the Company Law Board is not moving in the matter. Under an excuse that the Company Law Board has not yet made an order, a shareholder cannot be allowed to bypass the express provisions of the Companies Act and move the High Court under Article 226. A shareholder has very effective remedies under the Companies Act for prevention of oppression and mismanagement. When such remedies are available, the High Court should not readily entertain a petition under Article 226.

12. The learned Single Judge before whom the present writ petition came up for hearing very rightly held that the Companies Act provides a forum to consider the grievances made out by the first respondent in the writ petition. When such a forum, statutorily constituted, exists, it is but appropriate that resort to Article 226 should be discouraged. There is an efficacious alternative remedy available under the statute. In fact under the Companies Act, a more satisfactory solution is available. The Single Judge was right in pointing out that some of the shareholders have initiated proceedings before the Company Law Board. The only grievance of the petitioner in the writ petition is that no orders have been passed thereon. The Single Judge has rightly held that such a grievance cannot constitute a ground for invoking the jurisdiction of the High Court under Article 226. He, therefore, dismissed the writ petition.

13. In appeal, however, the Division Bench of the Andhra Pradesh High Court presided over by the Chief Justice, entertained the appeal on the ground that the petition raised many serious issues as to falsification of the accounts of a public limited company. It said that the acts of the company would jeopardize public interest. Therefore, the petition involved wider "public interest" and should be entertained. In the result the Division Bench issued a direction to the Central Government to make its own verification of the allegations in the writ petition. In other words, the Division Bench of the High Court directed an investigation into the affairs of the company, bypassing the detailed provisions with in-built safeguards under the Companies Act, designed specially for this purpose. The only ground for

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intervention appears to be "public interest". We fail to see what public interest is involved in disputes of the kind referred to in the writ petition. They basically deal with mismanagement of the affairs of the company and oppression of the minority shareholders. The company is only a deemed public limited company. Its shareholding is very closely held. The only other factor referred to in the writ petition to invoke the doctrine of so-called public interest, is the fact that the company had borrowed moneys from public institutions. This is no ground for not availing of the statutory remedies provided under the Companies Act before the appropriate statutory forums which are designed for this very purpose. We are distressed to find that the well-reasoned judgment of the Single Judge was interfered with in a casual manner. The impugned judgment rests on fragile foundations and reads more like an ipse dixit.

14. The appeal is allowed and the impugned judgment of the Division Bench of the Andhra Pradesh High Court is set aside. The first respondent shall pay to the appellants costs of the appeal quantified at Rs 15,000.

(1997) 5 Supreme Court Cases 453

(BEFORE S.P. BHARUCHA AND M. JAGANNADHA RAO, JJ.)

ANUJ MAHESHWARI .. Petitioner;

Versus

RAMESH YADAV AND ANOTHER .. Respondents.

Contempt Petition (C) No. 589 of 1996 in SLP (C) No. 17014 of 1996†, decided on April 28, 1997

Contempt of Courts Act, 1971 — S. 2(b) — Wilful disobedience of Court's order — Despite Supreme Court's order to Principal Secretary of Medical Health, Family Welfare and Medical Education Deptt., U.P. to remain present on the next date of hearing, the said officer going abroad on official tour prior to the date of hearing — Matter listed to another date when the said officer remaining present in the Court and explaining that before leaving Delhi she had given an application for exempting her from personal appearance and for fixing another date of her appearance and that she had consulted the then Addl. Advocate General who had advised her to go abroad as the order of the Court had been complied with and affidavit for exemption was sworn — However, application for exemption from personal appearance could not be filed in Court — Unqualified apology tendered by her before Supreme Court — Having regard to the circumstances that had the said officer's exemption application been filed and moved, it would have been granted, that to find her guilty of contempt and punish her would blight her future career and that she had tendered an unqualified apology at the earliest, held, her apology can be accepted — At the same time she sternly cautioned to be more heedful of judicial orders in future

R-M/T/17858/C

† From the Judgment and Order dated 24-5-1996 of the Allahabad High Court in S A No 78 of 1996

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(2011) 2 Supreme Court Cases 782

(BEFORE D.K. JAIN AND H.L. DATTU, JJ.)

KANAIYALAL LALCHAND SACHDEV AND OTHERS .. Appellants;

Versus

STATE OF MAHARASHTRA AND OTHERS .. Respondents.

Criminal Appeals Nos. 338-40 of 2011†, decided on February 7, 2011

A. **Debt, Financial and Monetary Laws — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Ss. 14, 13 and 17 — Writ petition against order of possession of secured assets under S. 14 — Recourse to specific remedy therefor provided under S. 17 not availed of — Refusal to entertain writ petition, held, fully justified — Held, action under S. 14 constitutes action taken after stage of S. 13(4), and falls within ambit of S. 17(1) — Thus, Act itself contemplates efficacious remedy for borrower or any person affected by action under S. 13(4) by providing for appeal before DRT — Hence, High Court rightly dismissed petition on ground that efficacious remedy was available to appellants under S. 17 — High Court fully justified in declining to exercise its jurisdiction under Arts. 226 and 227 — Appeal dismissed with costs quantified at ₹20,000**

B. **Debt, Financial and Monetary Laws — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — S. 14 — Scope — Reiterated, secured creditor may, in order to enforce his rights under S. 13(4), in particular S. 13(4)(a), take recourse to S. 14**

C. **Constitution of India — Art. 226 — Maintainability — Alternate remedy/Exhaustion of remedies — Reiterated, Arts. 226/227 not available if an efficacious alternative remedy available to aggrieved person**

Dismissing the appeal with costs, the Supreme Court

Held :

Section 14 of the Act provides that the secured creditor can file an application before the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction, the secured asset or other documents relating thereto are found for taking possession thereof. If any such request is made, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, is obliged to take possession of such asset or document and forward the same to the secured creditor. Therefore, it follows that a secured creditor may, in order to enforce his rights under Section 13(4), in particular Section 13(4)(*a*), may take recourse to Section 14 of the Act. (Para 18)

† Arising out of SLPs (C) Nos. 4436-38 of 2009. From the Judgment and Order dated 28-4-2009 of the High Court of Judicature at Bombay in Crl. WP No. 707 of 2009 and Order dated 8-5-2009 in Crl. WP No. 707 of 2009 and Order dated 1-7-2009 in Application No. 178 of 2009 in Crl. WP No. 707 of 2009

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United Bank of India v. *Satyawati Tondon*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260, *relied on*

Mardia Chemicals Ltd. v. *Union of India*, (2004) 4 SCC 311, *referred to*

An action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT. (Para 22)

Indian Overseas Bank v. *Ashok Saw Mill*, (2009) 8 SCC 366, *relied on*

The High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (Para 23)

Sadhana Lodh v. *National Insurance Co. Ltd.*, (2003) 3 SCC 524 : 2003 SCC (Cri) 762; *Surya Dev Rai* v. *Ram Chander Rai*, (2003) 6 SCC 675; *SBI* v. *Allied Chemical Laboratories*, (2006) 9 SCC 252; *City and Industrial Development Corpn.* v. *Dosu Aardeshir Bhiwandiwala*, (2009) 1 SCC 168, *relied on*

The appeals are utterly misconceived. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate, etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution. For the foregoing reasons, the impugned judgments cannot be flawed, warranting interference by the Supreme Court. Accordingly, the appeals, being devoid of any merit, are dismissed with costs, quantified at ₹20,000. (Paras 14, 25 and 26)

Transcore v. *Union of India*, (2008) 1 SCC 125, *referred to*

B-D/47287/CV

Advocates who appeared in this case :

Ms Kranti Anand, Ms Aishwarya Bhati, Rashid Khan, Ms Angeline S.A. Rodriques, Buddy A. Ranganadhan, A.V. Rangam, Sushil Karanjakar, Sanjay Kharde and Ms Asha Gopalan Nair, Advocates, for the appearing parties.

Chronological list of cases cited *on page(s)*

1. (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260, *United Bank of India* v. *Satyawati Tondon* 787*e*
2. (2009) 8 SCC 366, *Indian Overseas Bank* v. *Ashok Saw Mill* 788*b-c*
3. (2009) 1 SCC 168, *City and Industrial Development Corpn.* v. *Dosu Aardeshir Bhiwandiwala* 789*c*
4. (2008) 1 SCC 125, *Transcore* v. *Union of India* 785*h*
5. (2006) 9 SCC 252, *SBI* v. *Allied Chemical Laboratories* 789*c*
6. (2004) 4 SCC 311, *Mardia Chemicals Ltd.* v. *Union of India* 786*b*, 786*e-f*
7. (2003) 6 SCC 675, *Surya Dev Rai* v. *Ram Chander Rai* 789*c*
8. (2003) 3 SCC 524 : 2003 SCC (Cri) 762, *Sadhana Lodh* v. *National Insurance Co. Ltd.* 789*c*

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The Judgment of the Court was delivered by

D.K. JAIN, J.— Leave granted. Challenge in these appeals, by special leave, is to the judgments and orders dated 28-4-2009 and 1-7-2009 delivered by the High Court of Bombay in WP No. 707 of 2009, and Criminal Application No. 178 of 2009 in WP No. 707 of 2009, respectively whereby it has dismissed the writ petition filed by the appellants herein, and also declined to extend the status quo order granted by it to them.

2. Briefly stated, the facts, material for adjudication of the present appeals, may be stated thus: Respondent 3 viz. State Bank of India had advanced a loan of ₹4,50,00,000 to Appellant 6 on an equitable mortgage by deposit of the title deeds of certain properties, subject-matter of these appeals, on 6-2-2006. Appellants 1 to 5 and one Mr Lalchand Sachdeo stood as personal guarantors to the said loan.

3. On default of repayment of loan amount, Respondent 3 issued a notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 on 18-11-2006. On 12-2-2007, the officers of Respondent 3 dispossessed the appellants of one of the secured properties viz. T-125, CTS No. 1729.

4. Being aggrieved, the appellants filed a writ petition being Crl. WP No. 286 of 2007 before the Bombay High Court, inter alia, contending that the notice issued by Respondent 3 was illegal, no action could be taken in pursuance thereof, and if at all, the respondent wanted to take any action, it was required to approach the Chief Metropolitan Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act").

5. Before the High Court, Respondent 3 offered to withdraw the notice dated 18-11-2006 without prejudice to the rights and contentions advanced by them, and to return the possession of the said property to the appellants, subject to the appellants and all adult members furnishing an undertaking to the effect that they shall not alienate, encumber, transfer, dispose off and/or create any third-party interest in the said premises for a period of six months. Accepting the statement made on behalf of Respondent 3, the High Court dismissed the writ petition vide order dated 7-3-2007.

6. Thereafter, on 11-4-2007 Respondent 3 issued to the appellants a notice under Section 13(2) of the Act. The appellants replied to the said notice on 23-5-2007. Vide letter dated 29-5-2007, Respondent 3, communicated its reasons for not accepting the reply. Subsequently, Respondent 3 issued a public notice in newspapers, informing the appellants of the issuance of notice under Section 13(2) of the Act.

7. In pursuance thereof, Respondent 3, filed CC No. 223/M/2008 before the Chief Metropolitan Magistrate under Section 14 of the Act for taking possession of the secured assets. Vide order dated 3-2-2009, the Magistrate allowed the said application and directed the Assistant Registrar, Kurla Centre of Courts, to take possession of the mortgaged properties after issuing notice to the appellants. Vide notice dated 27-2-2009, the Assistant Registrar,

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directed the appellants to hand over the possession of the mortgaged properties to Respondent 3 within 15 days from the receipt of the said notice.

8. At this juncture, it would be expedient to extract the relevant portions of the said notice:

> "Whereas, the Chief Metropolitan Magistrate, Esplanade, Mumbai has passed the following order on 3-2-2009 on the application filed before him by State Bank of India, Mazda Complex, Parsi Agari Lane, Thana (W) 400601 through its authorised officer, Fazlur Rehman Sheikh.
>
> ORDER
>
> The application is allowed. Assistant Registrar, Mr P.A. Tendolkar, Kurla Centre of Courts after issuing notice of taking possession of the secured assets ....."

It is manifest from a bare perusal of the said notice that the order passed by the Magistrate dated 3-2-2009 was referred to by the Assistant Registrar in his notice.

9. Being aggrieved by the said notice, the appellants herein again approached the High Court. As aforestated, the High Court dismissed the said writ petition, vide order dated 28-4-2009, on the ground that an alternative remedy was available to the appellants under Section 17 of the Act. Nevertheless, the High Court directed the respondents to maintain status quo in the matter for a period of 10 weeks from the date of its order, so as to enable the appellants to approach the Debts Recovery Tribunal (for short "the DRT") under Section 17 of the Act.

10. Thereafter, the appellants filed Criminal Application No. 178 of 2009 in WP No. 707 of 2009 seeking an extension of the status quo period granted vide order dated 28-4-2009. As aforestated, the High Court rejected the said application filed by the appellants. Hence, the present appeals against both the said orders.

11. Ms Kranti Anand, learned counsel appearing on behalf of the appellants, while assailing the impugned orders, strenuously urged that apart from the fact that the notice issued by the Assistant Registrar was vague, it was never served on the appellants. In fact, the appellants received a copy of the order of the Magistrate during the proceedings before the High Court, pleaded the learned counsel. The learned counsel also urged that the notice issued by the Assistant Registrar was vitiated on account of non-compliance with Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short "the 2002 Rules") as well. It was argued that the High Court had also erred in equating action under Section 14 of the Act with action under Section 13(4)(*a*) of the Act. It was thus, asserted that for all these reasons, the impugned orders deserve to be set aside.

12. Per contra, Mr Buddy A. Ranganadhan, learned counsel appearing on behalf of Respondent 3, Bank, supporting the impugned judgments, contended that in light of the decision of this Court in *Transcore* v. *Union of India*[1], no fault could be found with the impugned judgments. It was also

1 (2008) 1 SCC 125

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urged that the appellants having already availed of the remedy of approaching the DRT, they are estopped from challenging the decision of the High Court.

13. Mr Sushil Karanjakar, learned counsel appearing on behalf of the State of Maharashtra contended that Rule 8 of the 2002 Rules was inapplicable in the instant case, inasmuch as it deals with sale of secured assets. According to the learned counsel, it was Rule 4 which was applicable to the facts of the instant case. In support, reliance was placed on the decision of this Court in *Mardia Chemicals Ltd.* v. *Union of India*[2].

14. Having bestowed our anxious consideration to the facts at hand, we are of the opinion that the appeals are utterly misconceived.

15. Section 13 of the Act deals with enforcement of security interest, providing that notwithstanding anything contained in Sections 69 or 69-A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the court's intervention, by such creditor in accordance with the provisions of the Act. Section 13(2) of the Act provides that when a borrower, who is under a liability to a secured creditor, makes any default in repayment of secured debt, and his account in respect of such debt is classified as non-performing asset, then the secured creditor may require the borrower, by notice in writing, to discharge his liabilities within sixty days from the date of the notice, failing which the secured creditor shall be entitled to exercise all or any of the rights given in Section 13(4) of the Act. Section 13(3) of the Act provides that the notice under Section 13(2) of the Act shall give details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the bank.

16. Section 13(3-A) of the Act was inserted by Act 30 of 2004 after the decision of this Court in *Mardia Chemicals*[2] and provides for a last opportunity for the borrower to make a representation to the secured creditor against the classification of his account as a non-performing asset. The secured creditor is required to consider the representation of the borrowers, and if the secured creditor comes to the conclusion that the representation is not tenable or acceptable, then he must communicate, within one week of the receipt of the communication by the borrower, the reasons for rejecting the same.

17. Section 13(4) of the Act provides that if the borrower fails to discharge his liability within the period specified in Section 13(2), then the secured creditor, may take recourse to any of the following actions, to recover his debt, namely—

> "13. (4)(*a*) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

2 (2004) 4 SCC 311

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(*b*) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

(*c*) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(*d*) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt."

18. Section 14 of the Act provides that the secured creditor can file an application before the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction, the secured asset or other documents relating thereto are found for taking possession thereof. If any such request is made, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, is obliged to take possession of such asset or document and forward the same to the secured creditor. (See *United Bank of India* v. *Satyawati Tondon*[3].) Therefore, it follows that a secured creditor may, in order to enforce his rights under Section 13(4), in particular Section 13(4)(*a*), may take recourse to Section 14 of the Act.

19. Section 17 of the Act which provides for an appeal to the DRT, reads as follows:

"**17.** ***Right to appeal.***—(1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under [sub-section (1) of Section 17].

3 (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260

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(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the Rules made thereunder...." a

20. The 2002 Rules, enacted under sub-section (1) and clause (*b*) of sub-section (2) of Section 38 read with sub-sections (4), (10) and (12) of Section 13 of the Act, set down the procedure for enforcing a security interest. Rule 4 of the 2002 Rules deals with the possession of movable assets, whereas Rule 8 deals with the possession of immovable assets. It is manifest that Rule 4 has no application to the facts of the instant case, as contended by the learned counsel for the State. b

21. In *Indian Overseas Bank* v. *Ashok Saw Mill*[4] the main question which fell for determination was whether the DRT would have jurisdiction to consider and adjudicate post Section 13(4) events or whether its scope in terms of Section 17 of the Act will be confined to the stage contemplated under Section 13(4) of the Act? On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this Court held as under: (SCC pp. 375-76, paras 35-36 & 39) c

"*35.* In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof. d e

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee. f

* * *

39. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT." g

(emphasis supplied by us)

h

4 (2009) 8 SCC 366

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22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.

23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh* v. *National Insurance Co. Ltd.*[5], *Surya Dev Rai* v. *Ram Chander Rai*[6] and *SBI* v. *Allied Chemical Laboratories*[7].)

24. In *City and Industrial Development Corpn.* v. *Dosu Aardeshir Bhiwandiwala*[8] this Court had observed that: (SCC p. 175, para 30)

> "*30.* The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:
>
> (*a*) adjudication of the writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
>
> (*b*) the petition reveals all material facts;
>
> (*c*) the petitioner has any alternative or effective remedy for the resolution of the dispute;
>
> (*d*) the person invoking the jurisdiction is guilty of unexplained delay and laches;
>
> (*e*) ex facie barred by any laws of limitation;
>
> (*f*) grant of relief is against public policy or barred by any valid law; and host of other factors."

25. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate, etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution.

26. For the foregoing reasons, the impugned judgments cannot be flawed, warranting interference by this Court. Accordingly, the appeals, being devoid of any merit, are dismissed with costs, quantified at ₹20,000.

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5 (2003) 3 SCC 524 : 2003 SCC (Cri) 762
6 (2003) 6 SCC 675
7 (2006) 9 SCC 252
8 (2009) 1 SCC 168

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(2007) 6 Supreme Court Cases 506

(BEFORE C.K. THAKKER AND ALTAMAS KABIR, JJ.)

NATIONAL COUNCIL FOR CIVIL LIBERTIES .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 69 of 2006, decided on July 10, 2007

Constitution of India — Art. 32 — PIL — Maintainability — Private disputes, reiterated, are not maintainable — Petitioner alleging that Medha Patkar (R-4), Narmada Bachao Andolan (R-5) and Khedut Mazdoor Chetna Sangath (R-6) were involved in supporting subversive activities by acquisition and supply of arms, explosives, detonators, gelatin sticks and bullets with their support groups/naxalite organisations with a view to obstructing various projects of national importance affecting the fundamental rights of citizens of Gujarat, M.P. and Rajasthan — Tenability of — Held, although ordinarily in a case like this a writ petition under Art. 32 would be maintainable, the facts of this case do not call for any interference — The facts clearly indicate that the writ petition has been filed out of grudge harboured by the President of the petitioner against Medha Patkar and appears to be a private interest litigation to discredit and diffuse the agitation undertaken by R-5 for rehabilitation of the displaced persons from the dam site before submergence of their habitat — Except for vague allegations regarding receipt of foreign funds by R-4, R-5 & R-6 and their alleged use for subversive activities, none of the allegations have any evidentiary value as they are unsupported by any evidence as such — Moreover, no individual other than the petitioner has been impleaded to support the allegations — No case has therefore been made for a direction to CBI to investigate into the said allegations

This writ petition was filed by the National Council for Civil Liberties through its President, V.K. Saxena, against the Union of India, State of Gujarat, State of M.P., Medha Patkar (Respondent 4), Narmada Bachao Andolan (Respondent 5), Rahul Banerjee (Respondent 6) and the Director of CBI, *inter alia*, for enforcement of the petitioner's fundamental rights under Articles 14 and 21 of the Constitution on account of arbitrary inaction of the respondents and for protection of a better right to live of the inhabitants of Gujarat, M.P. and Rajasthan. The writ petitioner was basically concerned with the alleged acquisition and supply of arms, explosives, detonators, gelatin sticks and bullets by Respondents 4, 5 and 6 and their support groups/naxalite organisations. Further allegations had been made with regard to supply and free usage of arms and explosives with a view to obstructing the progress of projects of national importance.

Dismissing the writ petition with costs of Rs 5000, the Supreme Court

Held:

Public interest litigation may be entertained when an issue of great public importance is involved, but not to settle private scores. (Para 33)

In an application under Article 32 of the Constitution there must be an element of infraction of one or the other fundamental rights contained in Part III of the Constitution. Although the writ petitioner has attempted to show that the

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writ petition had been filed for the benefit of the people of the States of Gujarat, M.P. and Rajasthan, the facts as sought to be projected clearly indicate that the writ petition has been filed out of grudge harboured by V.K. Saxena, the President of the petitioner organisation against Medha Patkar. (Para 33)

The materials in the writ petition consist only of vague allegations without any proper foundation. No case has therefore been made for a direction to CBI to investigate into the said allegations. (Para 36)

Although ordinarily in a case like this a writ petition under Article 32 of the Constitution would be maintainable, in the facts of this case the writ petition does not call for any interference by the Supreme Court. (Para 33)

Subhash Kumar v. *State of Bihar*, (1991) 1 SCC 598 : AIR 1991 SC 420; *Dattaraj Nathuji Thaware* v. *State of Maharashtra*, (2005) 1 SCC 590; *B. Singh (Dr.)* v. *Union of India*, (2004) 3 SCC 363 : (2007) 1 SCC (L&S) 616; *Khedat Mazdoor Chetna Sangath* v. *State of M.P.*, (1994) 6 SCC 260 : 1994 SCC (Cri) 1643, *relied on*

Olga Tellis v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545; *Shantistar Builders* v. *Narayan Khimalal Totame*, (1990) 1 SCC 520, *cited*

D-M/A/36467/C

Advocates who appeared in this case :

Amar Dave, Amit Kr. Sharma and E.C. Agarwala, Advocates, for the Petitioner;

R.P. Bhatt, Senior Advocate (Abhishek Mishra, Ms Hemantika Wahi, Ms Pinky Behera, Ms Sangeeta Singh, Sanjay Parikh, A.N. Singh, Ms Manjula Gupta, Jitin Sahni, Vikas Upadhyay, B.S. Banthia, Navin Prakash and Ms Sushma Suri, Advocates, with him) for the Respondents and Rahul Banerjee, Respondent-in-person.

Chronological list of cases cited *on page(s)*

1. (2005) 1 SCC 590, *Dattaraj Nathuji Thaware* v. *State of Maharashtra* 513*b-c*, 513*d*, 515*g-h*
2. (2004) 3 SCC 363 : (2007) 1 SCC (L&S) 616, *B. Singh (Dr.)* v. *Union of India* 513*d*
3. (1994) 6 SCC 260 : 1994 SCC (Cri) 1643, *Khedat Mazdoor Chetna Sangath* v. *State of M.P.* 514*b-c*
4. (1991) 1 SCC 598 : AIR 1991 SC 420, *Subhash Kumar* v. *State of Bihar* 513*a*
5. (1990) 1 SCC 520, *Shantistar Builders* v. *Narayan Khimalal Totame* 510*b*
6. (1985) 3 SCC 545, *Olga Tellis* v. *Bombay Municipal Corpn.* 509*g-h*

The Judgment of the Court was delivered by

ALTAMAS KABIR, J.— This writ petition has been filed by the National Council for Civil Liberties through its President, Shri V.K. Saxena, against the Union of India, State of Gujarat, State of Madhya Pradesh, Smt Medha Patkar, Narmada Bachao Andolan, Shri Rahul Banerjee and the Director of the Central Bureau of Investigation, *inter alia*, for enforcement of the petitioner's fundamental rights under Articles 14 and 21 of the Constitution perpetually on account of arbitrary inaction of the respondents and for protection of a better right to live of the inhabitants of Gujarat, Madhya Pradesh and Rajasthan. On the basis of the allegations made in the writ petition, the writ petitioner has prayed for the following reliefs:

"(*a*) Issue appropriate writ, order or direction directing Respondents 1, 2, 3 and 7 to investigate into the routing of foreign funds into the

activities of Respondents 4, 5 and 6 of its subordinate and supportive organisations that have been referred to in this petition and that may be revealed during the course of such investigation and its utilisation for purposes that are found to be seditious in nature and for purposes that are against national interest and are directed against smooth implementation of projects of national importance and to report to this Hon'ble Court within such time as this Hon'ble Court may deem fit to prescribe;

(*b*) Issue appropriate writ, order or direction directing Respondents 2 and 3 to place before this Hon'ble Court the status report on pending prosecutions lodged against Respondents 4, 5 and 6 and their activists along with that of the support groups and organisations as enumerated in this petition, and this Hon'ble Court be pleased to issue such appropriate directions upon receipt of such status report to ensure expeditious disposal of pending investigation and/or trials within such time period as may be found fit and appropriate by this Hon'ble Court;

(*c*) Issue appropriate writ, order or direction directing Respondent 3 to place before this Hon'ble Court a specific action-taken report in view of the vigilance report/Devas Police report after the Mehendikheda firing incident in the State of M.P. and to issue appropriate directions on receipt of such status report further directing such investigation to be conducted by Respondent 7;

(*d*) Issue appropriate writ, order or direction directing Respondent 7 to undertake detailed investigation into the affairs of Respondents 4, 5, 6 and their support groups as enumerated in this petition and more particularly in respect of the activities in the nature of source, supply and acquisition of arms, explosives, detonators, gelatin sticks, bullets and connections with naxal organisations as well as supply and free usage of arms and explosives more particularly with a view to thwart the progress of projects of national importance by terrorising government officials and locals, facts of which have come to be revealed in the final report submitted by SDO, Bagli, M.P. to Additional Sessions Judge, Bagli, District Devas;

(*e*) Issue appropriate writ, order or direction directing the Central and the State Government to evolve a proper mechanism for implementation of a project of national importance where project developer be directed to provide all available information to the people of that particular area regarding cost of project, time schedule for implementation, why the project is being implemented, its likely impact on citizens (positive or negative), how the Government plans to compensate the citizens, who are likely to be displaced or adversely affected and benefits after the implementation, etc. to curb the misinformation spread by vested interests. Such information should be freely and easily available to all;

(*f*) Any other direction which this Hon'ble Court may deem fit."

2. The prayer indicate that the writ petitioner is basically concerned with the alleged acquisition and supply of arms, explosives, detonators, gelatin

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sticks and bullets by Respondents 4, 5 and 6 and their support groups/ naxalite organisations. Further allegations have been made with regard to supply and free usage of arms and explosives with a view to obstructing the progress of projects of national importance.

3. On 7-7-2006, when the writ petition was moved, this Court did not consider it necessary to issue notice to Respondent 4, Smt Medha Patkar and Respondent 7, Director, Central Bureau of Investigation. Presumably the Court was not entirely convinced of the allegations against Smt Medha Patkar and hence no notice was issued to her. Consequently, at the time of final hearing of the writ petition, no one appeared on her behalf or on behalf of CBI while Respondent 6, Rahul Banerjee, appeared in person.

4. When the matter was taken up for final hearing on 10-5-2007, Ms Indira Jaising, learned Senior Advocate, appearing for Respondent 5, raised a preliminary objection that the writ petition was not maintainable, particularly in the shape of a public interest litigation, since no fundamental right of the petitioner organisation had been infringed from the facts as disclosed in the writ petition and the writ petitioner had filed the writ petition out of sheer grudge against Respondents 4, 5 and 6. She pointed out that apart from Shri Saxena, the President of the National Council for Civil Liberties, nobody else had been impleaded as the petitioner to lend support to the case made out in the writ petition. Ms Indira Jaising urged that the petitioner had no locus standi to maintain the petition.

5. A similar stand was taken on behalf of the Union of India.

6. After taking note of such objection, we decided to hear the parties both on the question of maintainability of the writ petition and also on merits.

7. Mr Amar Dave, learned advocate, appearing in support of the writ petition, urged that Shri Saxena had no personal axe to grind against Respondent 5 or 6 but he was actuated by national interest to file the writ petition to prevent Respondents 5 and 6 from obstructing the construction of the Sardar Sarovar Dam over Narmada river. Mr Dave urged that the lives of thousands of people, not only in Gujarat, but also in Madhya Pradesh and Rajasthan, had been adversely affected by the activities of Respondents 5 and 6 aimed at preventing the construction of the dam. It was urged that such action on the part of Respondents 5 and 6 and the inaction of Respondents 1, 2 and 3 in containing such obstructive acts adversely affected the people of Gujarat, Rajasthan and Madhya Pradesh, and amounted to violation of their fundamental rights under Articles 14 and 21 of the Constitution, thereby giving rise to a cause of action for filing the writ petition under Article 32 of the Constitution.

8. As far as locus standi was concerned, Mr Dave pointed out that the Bombay High Court and subsequently this Court had in *Olga Tellis* v. *Bombay Municipal Corpn.*[1] entertained writ petitions filed by a journalist and two pavement-dwellers for enforcing the fundamental rights of pavement and slum-dwellers under Articles 21, 37, 39(*a*) and 41 of the Constitution against

1 (1985) 3 SCC 545

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their forcible eviction and the removal of their hutments under the Bombay Municipal Corporation Act, 1888. Mr Dave pointed out that this Court made it clear that writ petitions filed by Olga Tellis and two others were maintainable since the right to life guaranteed under Article 21 includes the right to livelihood from which they would be deprived if the slum-dwellers were evicted from their slums and pavement dwellings, which would be unconstitutional.

9. Mr Dave also referred to the decision of this Court in *Shantistar Builders* v. *Narayan Khimalal Totame*[2] wherein while considering the provisions of Sections 20 and 21 of the Urban Land (Ceiling and Regulation) Act, 1976, this Court had also occasion to consider the width and ambit of Article 21 of the Constitution to include the right to shelter. It was observed that the right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view.

10. Mr Dave contended that those people who were deprived of the benefits of the dam were being denied their rights under Article 21 of the Constitution and since the petitioner Association was championing their rights, the writ petition must be held to be maintainable.

11. Apart from the above, Mr Dave submitted that Respondent 5 had, in fact, filed a writ application in respect of the dispute which arose between the State of Gujarat and its neighbouring States in the matter of use, distribution and control of the waters of the inter-State Narmada river, including the height of the Sardar Sarovar Dam and the same had been duly entertained by this Court and orders and directions had been passed therein. There too, the question of maintainability had been raised but the writ petition had been entertained by this Court upon holding that water is a basic need for the survival of human beings and is a part of the right to life and human rights as enshrined in Article 21 of the Constitution of India. It was also observed that while the destruction of trees on forest lands was undoubtedly harmful, large dams also converted wasteland into agricultural land and made the area greener. Consequently, large dams can also become instruments in improving the environment.

12. Coming to the merits of the writ petition, Mr Dave directed the major portion of his submissions against Respondent 6 with reference to Khedut Mazdoor Chetna Sangath which was alleged to be controlled by him. An attempt has been made to link the Narmada Bachao Andolan with the Khedut Mazdoor Chetna Sangath in order to establish a link between Respondent 4 Smt Medha Patkar and Respondent 6 Shri Rahul Banerjee. Mr Dave submitted that large sums by way of foreign funds were being received by Respondent 5 through its support groups and the same were being misutilised for criminal activities such as procuring and providing arms and ammunitions to those involved in the naxalite movement. Mr Dave submitted that the

2 (1990) 1 SCC 520

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allegations were of a very serious nature and required investigation by CBI since the security of the nation was at stake. It was pointed out that there were several criminal cases pending against Respondent 6 who was a supporter of Respondent 5, Narmada Bachao Andolan and actively participated in its activities.

13. Mr Dave submitted that not only was Respondent 5 an unregistered organisation but that since the last two decades an organised campaign had been designed and directed by it under the garb of social activism to oppose projects of national importance such as the Sardar Sarovar Dam in Gujarat and the Maheshwar, Omkareshwar and Indirasagar projects in Madhya Pradesh. Mr Dave submitted that as a public spirited citizen Mr Saxena had filed the writ petition for a direction upon CBI to conduct an investigation into the affairs of Respondents 4, 5 and 6 on account of the inaction of the other respondents.

14. Appearing for Respondent 5, Ms Indira Jaising, learned Senior Advocate, strongly urged that since none of the fundamental rights of the writ petitioner Association had been adversely affected by the Narmada Bachao Andolan and its activities, the writ petition was not maintainable under Article 32 of the Constitution. Ms Jaising urged that the writ application was the result of a grudge nurtured by Shri Saxena against Smt Medha Patkar and in the process he had roped in Respondent 6 in order to show him to be an associate of Smt Medha Patkar.

15. Ms Jaising referred to the counter-affidavit filed on behalf of Respondent 5 to the writ petition and the annexures thereto. Referring to Annexure R-3 of the counter, she submitted that from the report it was quite obvious that Shri V.K. Saxena had a personal grudge against Smt Medha Patkar which had motivated him to file the writ petition.

16. Reference was also made to Annexure R-4 which was a report of an unprovoked attack on Respondent 4 and her followers by the members of the Bharatiya Janata Party Yuva Morcha, Congress and National Council for Civil Liberties activists led by one Amit Thakkar and Shri V.K. Saxena. The demonstrators hurled abuse at Smt Medha Patkar who was requesting them not to disturb the meeting. When Smt Mallika Sarabhai tried to intervene, she too was threatened.

17. Ms Jaising also referred to Annexure R-6 to the counter which is a letter addressed to the trustees of the Jansahyog Trust, Bombay, by both Baba Amte and Smt Medha Patkar indicating that the money awards which had been received by them were to be used for charitable purposes and not for the activities of the Narmada Bachao Andolan.

18. Ms Indira Jaising submitted that Shri Saxena had a pathological hatred for Smt Medha Patkar and her activities so much so that even Smt Mallika Sarabhai was not spared in his relentless crusade against Smt Medha Patkar and her friends.

19. Ms Jaising denied that the Narmada Bachao Andolan had received any money from the McArthur Foundation, USA, as alleged in the writ

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petition. She submitted that the "Right of Livelihood Award" and "Goldman Foundation" had been jointly awarded in favour of Narmada Bachao Andolan, Baba Amte and Smt Medha Patkar in 1991. This is a prestigious award given to individuals and organisations which have worked for the cause of environmental justice. Upon receipt of the said award, a joint decision was taken by the Narmada Bachao Andolan and Baba Amte not to accept the money received through the award but to create a trust in the name of Jansahyog Trust and the entire award money was deposited in favour of the trust with the condition that the money would not be used for any of the activities of the Narmada Bachao Andolan. Ms Jaising submitted that poison has been spread by Shri Saxena as part of his campaign to denigrate Smt Medha Patkar and her activities.

20. Ms Jaising then submitted that Respondent 6 Rahul Banerjee, had been introduced in the writ petition only in order to show that he was involved in anti-national activities and that Smt Medha Patkar and the Narmada Bachao Andolan had used him in their attempts to obstruct the construction of the dam. In the process, Shri Saxena has also tried to suggest that Smt Medha Patkar was involved in anti-national activities and was utilising foreign funds received by her in the name of the Narmada Bachao Andolan to arrange for purchase and supply of guns and ammunitions to anti-national elements who were engaged in disrupting the normal life of the citizens of India. Respondent 6 Rahul Banerjee has been made out to be a sympathiser of the naxalite movement and was using his connection with Smt Medha Patkar to attain his objectives.

21. Ms Jaising submitted that such ridiculous and absurd allegations merely demonstrate the extent of the grudge nurtured by Shri Saxena against Smt Medha Patkar and his attempts to obstruct the lawful agitation carried on by Smt Medha Patkar to ensure that the tribals who were being displaced on account of submergence of the habitats were duly rehabilitated and compensated for the trauma and shock experienced by them on account of such submergence.

22. Ms Jaising forcefully urged that the writ petition was not maintainable and the stand taken that Respondent 5 had violated the petitioner's fundamental rights under Article 21 of the Constitution, was without basis and was liable to be rejected. On the other hand, it was the right of the displaced persons which had been affected in violation of Article 21 of the Constitution which was canvassed by Respondent 5. Ms Jaising submitted that neither the State of Madhya Pradesh nor the States of Gujarat and Rajasthan, which were the ultimate beneficiaries of the Sardar Sarovar Dam, had come forward to question/challenge the activities of Smt Medha Patkar and the Narmada Bachao Andolan. Only Shri Saxena had, in his individual capacity as President of the National Council for Civil Liberties, filed the writ application out of a personal grudge. According to Ms Jaising, the writ petition had not been filed in the public interest and such grudge litigation had been deprecated and discouraged by this Court.

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23. In support of her submissions, Ms Jaising firstly referred to the decision of this Court in *Subhash Kumar* v. *State of Bihar*[3] wherein while considering the maintainability of a writ petition under Article 32 of the Constitution, this Court observed that a petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Article 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or their personal grudge and enmity. If such petitions were entertained, it would amount to abuse of the process of the court.

24. In this regard, reference was also made to the decision of this Court in *Dattaraj Nathuji Thaware* v. *State of Maharashtra*[4] wherein also the scope of Article 226 of the Constitution in entertaining "public interest litigation" had been explained. This Court observed that "public interest litigations" were to be admitted with great care and for redressal only of genuine public wrongs or injury and not for the redressal of private, publicity-oriented or political disputes or other disputes not genuinely concerned with public interest.

25. Reference was also made to the decision of this Court in *B. Singh (Dr.)* v. *Union of India*[5] which had been followed in *Dattaraj Nathuji Thaware case*[4]. Several other decisions were also referred to by Ms Jaising in support of her submissions which are in the same vein as those cited above and will only amount to multiplication of decisions.

26. Ms Jaising submitted that this was a case of *suggestio falsi et suppressio veri* (a suggestion of falsehood and suppression of truth) and the writ petition was therefore liable to be dismissed.

27. Respondent 6 Shri Rahul Banerjee, who appeared in person, denied the allegations in the writ petition which were directed mainly against him and urged that the same had been made only to persuade the Court into passing an order against Smt Medha Patkar and Respondent 5. He denied that the Society being run by him, namely, the Khedut Mazdoor Chetna Sangath was engaged in any kind of unlawful and/or anti-national activities as alleged in the writ petition or at all. He submitted that he was not connected with the Narmada Bachao Andolan and the case of sedition under Sections 121 and 121-A of the Penal Code had been quashed by the Madhya Pradesh High Court in Criminal Revision No. 942 of 2003 by its judgment dated 26-4-2004. Shri Banerjee submitted that he was an alumnus of the Indian Institute of Technology, Kharagpur, and his association with Khedut Mazdoor Chetna Sangath was to prevent exploitation of tribals and adivasis. He submitted that in this regard the Sangath had filed a writ petition against the State of Madhya Pradesh alleging harassment by police officers in registering of

3 (1991) 1 SCC 598 : AIR 1991 SC 420
4 (2005) 1 SCC 590
5 (2004) 3 SCC 363 : (2007) 1 SCC (L&S) 616

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FIRs, handcuffing and locking up of tribals in various police stations when they objected to such exploitation. The matter reached this Court which observed that the Magistracy requires to be sensitised to the values of human dignity and to the restraint on power. The Court also observed that the reports of CBI to the Judicial Magistrate revealed the sordid picture and the sorrowful plight of public-spirited men whose desire was to prevent exploitation of the poor adivasis. Ultimately, directions were given to CBI to investigate and register cases and prosecute the officers however high or low in the hierarchy of the administration for their lapses. Shri Banerjee submitted that the decision of this Court had been reported in *Khedat Mazdoor Chetna Sangath* v. *State of M.P.*[6]

28. Regarding the allegation of receipt of illegal funds by him and his wife Subhadra Khaperde and using the same for inciting armed rebellions against the State, Respondent 6 submitted that the funds had been received as fellowship grants from various bona fide agencies for implementation of development projects. All the said funds had been properly utilised for the purposes for which they had been granted and there were supporting vouchers in support of the same which had been duly certified by Chartered Accountants, copies whereof had been marked as Annexure R-9 to the counter filed by Respondent 6. As to the funds received as fellowship grants from the McArthur Foundation, USA, the same were solely used for improving the reproductive health and rights situation of Bhil adivasi women and had no connection whatsoever with the work of Respondents 4 and 5 nor were they used to purchase arms with the intention of staging an armed rebellion against the State. Shri Banerjee added that the Foundation is a renowned funding agency having the permission of the Union Home Ministry to make such grants in India. It has funded over a 100 NGOs in India, including the Self-Employed Women's Association (SEWA), set up by the Magsaysay awardee and former Rajya Sabha Member, Elaben Bhatt. Shri Banerjee submitted that despite repeated investigations into sources and utilisation of these funds by Madhya Pradesh Police, the Union Home Ministry had found nothing untoward regarding the acquisition and utilisation of such funds.

29. Shri Banerjee also referred to the affidavit filed on behalf of the State of Gujarat in which it has been stated that there are no criminal cases pending in the State of Gujarat against Respondents 4, 5 and 6 and the one case involving the manhandling of two officers of the Gujarat Government while discharging their duty in Village Barada in Madhya Pradesh was also compromised and disposed of by the Judicial Magistrate in March 2003.

30. Shri Banerjee repeated Ms Jaising's submissions that the present litigation was the result of a grudge harboured by Shri Saxena against Smt Medha Patkar and an attempt had been made to discredit her by suggesting that she was involved in anti-national activities which were allegedly being

6 (1994) 6 SCC 260 : 1994 SCC (Cri) 1643 : JT (1994) 6 SC 60

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carried out by Respondent 6 under the banner of Khedut Mazdoor Chetna Sangath.

31. Both the Union of India and the State of Madhya Pradesh had little to add and they relied on the affidavits filed on their behalf in the proceedings. In the counter-affidavit filed on behalf of the Union of India, it has been generally stated that the Ministry of Home Affairs in its Foreign Contribution Regulation Act Division had not granted permission to Respondent 4 or certain organisations named in the writ petition to receive foreign funds. However, it has also been categorically stated that an inspection was carried out in terms of Section 14 of the Foreign Contribution (Regulation) Act, 1976 into the books of accounts of among others the Narmada Bachao Andolan, Badwani, Madhya Pradesh in 2002 and the same did not reveal any instance of violation of the aforesaid Act. A similar enquiry had also been conducted in 2000 and then also no such violation had been detected. The said information was conveyed to the Chief Minister of Gujarat by the Minister of State, Ministry of Home Affairs, Government of India, by letter dated 26-8-2003. The contents of the said letter have been made Annexure R-1/1 to the affidavit affirmed on behalf of the Union of India and reads as follows:

> "Kindly refer to your Letter No. CMS/GO1/150 dated the 27th September, 2001 addressed to the Hon'ble Dy. P.M. regarding alleged violation of the Foreign Contribution (Regulation) Act, 1976 by the functionaries of Narmada Bachao Andolan (NBA).
>
> This matter was investigated in some detail under the provision of the said Act. The accounts/records of the NBA and a number of NGOs associated with it were inspected but no specific instance of any violation of FCRA, 1976 was detected."

32. In the affidavit affirmed on behalf of the State of Madhya Pradesh, it has been stated that the existing laws were sufficient to take care of the reliefs claimed by the writ petitioner and appropriate action under the existing laws had already been undertaken.

33. Having heard the learned counsel for the respective parties and having considered the materials on record, we are of the view that although ordinarily in a case like this a writ petition under Article 32 of the Constitution would be maintainable, in the facts of this case the writ petition does not call for any interference by this Court. The various decisions cited by counsel on both sides indicate in what circumstances public interest litigation may be entertained by the courts. We share the same views. We are also of the view that public interest litigation may be entertained when an issue of great public importance is involved, but not to settle private scores as was held in *Dattaraj Nathuji Thaware case*[4]. Furthermore, in an application under Article 32 of the Constitution there must be an element of infraction of one or the other fundamental rights contained in Part III of the Constitution. Although the writ petitioner has attempted to show that the writ petition had been filed for the benefit of the people of the States of Gujarat, Madhya Pradesh and Rajasthan, the facts as sought to be projected clearly indicate

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that the writ petition has been filed out of grudge harboured by Shri Saxena against Smt Medha Patkar. Except for vague allegations regarding receipt of foreign funds by Respondents 4, 5 and 6 and their alleged use for subversive activities, none of the allegations have any evidentiary value as they are unsupported by any evidence as such. There is no material on record to show that foreign funds have, in fact, been received by Respondent 5 or that the same had been misutilised for subversive activities of an anti-national character. On the other hand, there is evidence to show that certain monetary awards had been received jointly by Respondent 5 and Baba Amte which had been vested in a trust which had no connection with the activities of Respondent 5. In fact, the writ petition appears to have been filed as a fishing exercise to try and procure evidence against the said Respondents 4, 5 and 6. Having seen the annexures to the counter-affidavit filed on behalf of Respondent 5, we are inclined to accept Ms Indira Jaising's submissions that Shri Saxena had a private grudge against Smt Medha Patkar which had motivated him to file the writ petition and not in the public interest as claimed by him.

34. Respondent 6 has been introduced in the writ petition to malign Respondents 4 and 5 by making allegations of subversive activities against Respondent 6 and trying to establish a link between Respondent 6 and Smt Medha Patkar to her discredit. There is no direct evidence of any kind of subversive activity allegedly engaged in by the Narmada Bachao Andolan which could be said to be anti-national. On the other hand, Respondent 5 appears to be genuinely concerned with the rehabilitation of the tribals and the other habitats of the submerged areas in keeping with the decision of this Court that the rehabilitation programme should be completed before submergence of the areas which were inhabited by them.

35. Although the writ petition has been shown to have been filed to protect the interest of the people of the three States of Gujarat, Madhya Pradesh and Rajasthan, except for Shri Saxena representing the writ petitioner Association, there is no other individual who has been impleaded as the petitioner to support such an argument. Although the writ petition is alleged to be in the nature of a public interest litigation, the same appears to be a "*private interest litigation*" to discredit and diffuse the agitation undertaken by Respondent 5 for rehabilitation of the displaced persons from the dam site before submergence of their habitat.

36. In our view, the materials in the writ petition consist only of vague allegations without any proper foundation. No case has therefore been made for a direction to CBI to investigate into the said allegations.

37. Having regard to the view taken by us we do not intend to separately deal with the decisions cited on behalf of the respective parties.

38. The writ petition is accordingly dismissed with costs assessed at Rs 5000.

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Court must be upheld, that of the Delhi High Court, albeit for different reasons, cannot be sustained.

51. For the reasons aforementioned, whereas Civil Appeal arising out of SLP (C) No. 17008 of 2006 is dismissed with costs and counsel's fee assessed at Rs. 1,00,000/-. Civil Appeal arising out of SLP (C) No. 17558 of 2006 is allowed and the parties shall pay and bear their own costs.

Order accordingly.

AIR 2007 SUPREME COURT 758

(From : Punjab and Haryana)

Dr. ARIJIT PASAYAT
AND S. H. KAPADIA, JJ.

Civil Appeal No. 95 of 2007 (arising out of SLP (C) No. 21781 of 2004), D/- 8-1-2007.

Neetu v. State of Punjab & Ors.

(A) Constitution of India, Art. 226 — Public interest litigation — Courts should not allow its process to be abused for oblique consideration by masked Phantoms — Such petitions to be rejected at threshold — Exemplary costs to be levied in appropriate cases.

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Such petitions deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

(Para 10)

(B) Constitution of India, Art. 226 — Public interest litigation — Petition targetting particular person — Court should be cautious to see whether attack in guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object.

(Para 12)

(C) Constitution of India, Arts. 226, 16 — P.I.L. — Not to be entertained in service matters.

(Para 13)

Cases Referred : Chronological Paras

2004 AIR SCW 1494 : AIR 2004 SC 1923 11
2003 AIR SCW 6105 : AIR 2004 SC 280 8
1998 AIR SCW 3467 : AIR 1999 SC 114 7
1996 AIR SCW 3356 : AIR 1996 SC 2687 6
1994 AIR SCW 1953 : AIR 1994 SC 2151 6
(1994) 2 SCC 481 6

Dr. ARIJIT PASAYAT, J. :— Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court allowing the writ petition filed by the respondent No.7 Daljit Singh, purportedly in public interest as a Public Interest Litigation (in short 'PIL'). Respondents 1 to 6 were official respondents in the writ petition. Grievance in the writ petition was that the appellant had got appointment as Audit Inspector, Co-operative Societies Ferozepur on the basis of Schedule Caste certificate though she was not member of any Scheduled Caste. It was averred that the appellant was married to Shri Jagminder Singh, member of the Scheduled Caste and it was on that basis aforesaid certificate had been obtained. It was stated that in spite of several complaints made to the authorities, no effective action was taken. The official respondents filed a reply to the effect that proceedings to cancel the scheduled caste certificate were under progress and, therefore, the writ petition was premature. The appellant filed a written statement stating that on account of her marriage with Jagminder Singh, she was to be considered as a member of the scheduled caste. It was pointed out that the writ petitioner was not qualified and only because of personal vendetta he had filed the writ petition styled as a PIL. The High Court by the impugned judgment issued a writ in the nature of quo warranto setting aside the appointment of the appellant.

3. In support of the appeal, learned counsel for the appellant submitted that in ser-

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vice matters, PIL is not maintainable. The writ petition was filed because of personal animosity and can by no stretch of imagination be considered to be a public interest litigation.

4. Learned counsel for the respondent No.7, on the other hand submitted that since the appellant was not entitled to a certificate to the effect that she belonged to any scheduled caste the authorities were bound to take action on his grievances.

5. The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

6. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra v. Prabhu (1994 (2) SCC 481), and Andhra Pradesh State Financial Corporation v. M/s. GAR Re-Rolling Mills and Anr. (AIR 1994 SC 2151)). No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See Dr. B.K. Subbarao v. Mr. K. Parasaran, (1996 (7) JT 265)). Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

(1994 AIR SCW 1953)

(1996 AIR SCW 3356)

7. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors. (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts, and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

(1998 AIR SCW 3467)

8. The aforesaid position was highlighted in Ashok Kumar Pandey v. State of W.B. (2004 (3) SCC 349).

(2003 AIR SCW 6105)

9. It is depressing to note that on account

of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - Government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.

10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting *bona fide* and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

11. The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others." (See : Dr. B. Singh v. Union of India and Others (2004 (3) SCC 363).) (2004 AIR SCW 1494)

12. When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object.

13. Therefore, as rightly submitted by learned counsel for the appellant, writ petition itself was not maintainable, to that extent the High Court's order cannot be maintained. But it appears that the official respondents have already initiated action as

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regards the caste certificate. Though PIL is not to be entertained in service matters, that does not stand on the way of the officials from examining the question in the right perspective. In the present case admittedly the officials have initiated action. What action will be taken in such proceedings is not the subject-matter of controversy in the present appeal. However, it shall not be construed as if we have expressed any opinion on the merits of the proceedings stated to be pending. The only issue which has been examined relates to the *locus standi* of the writ petitioner (respondent No.7) to file PIL.

14. The appeal is allowed to the aforesaid extent but without any order as to costs.

Order accordingly.

AIR 2007 SUPREME COURT 761

(From : Bombay)*

Dr. ARIJIT PASAYAT
AND S. H. KAPADIA, JJ.

Criminal Appeal No. 21 of 2007 (arising out of SLP (Crl.) No. 2581 of 2006), D/- 8-1-2007.

Ramkisan v. State of Maharashtra.

Penal Code (45 of 1860), S. 304, Part I — Culpable homicide not amounting to murder — Deceased encroaching upon land of accused — Did not stop in spite of being told repeatedly not to do so, and did not pay any heed — Accused inflicted single blow by axe on head of deceased — Assault undisputedly was given on course of sudden quarrel, without premeditation and without accused taking any undue advantage — Accused liable to be convicted under S. 304, Part I and not under S. 302.

Case law discussed.

(Para 14)

Cases Referred : Chronological Paras

2004 AIR SCW 7376 : AIR 2005 SC 1460 13

1993 AIR SCW 2734 : AIR 1993 SC 2426 12

Sanjay V. Kharde and Mrs. Chandana Ramamurthi, Advs., for Appellant; S. S. Shinde and V. N. Raghupathy, Advs., for Respondent.

Dr. ARIJIT PASAYAT, J. :—Leave granted.

2. Appellant along with two others faced trial for alleged commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial court found each of the accused persons guilty and convicted each to undergo rigorous imprisonment for life and to pay a fine of Rs. 500/- each with default stipulation. The conviction and the sentence were challenged by the three accused persons in appeal before the Bombay High Court, Aurangabad Bench. By the impugned judgment the High Court set aside the conviction of the co-accused i.e. accused no.2 and accused no.3 before the trial court. However, the appeal filed by the appellant was dismissed.

3. Background facts in a nutshell are as follows:

The incident in question was alleged to have taken place on 22.01.2002. It was reported to Police Station, Newasa by Narsingh Mohan Gavane (PW-5) by his complaint (Exh-21). On this complaint, ASI Laxman Pawar (PW-10) registered an offence punishable under section 302 IPC vide CR No.17/02. Further investigation was conducted by Police Inspector Pandharinath Kedare (PW-11).

4. On 22.01.2002 between 2.30 to 3.00 pm near the field of accused no.1-appellant on the bank of Godavari river within the jurisdiction of village Gainimb, Mohan Gavane (hereinafter referred to as the 'deceased') along with his family members including his sons Narsing (PW-5), Devising (PW-6) and his wife Chandrabhaga (PW-9) was staying on the bank of river by erecting a hut. Accused persons whose land is also on the side of bank of river, had their farm house in their field. Deceased was mainly doing a business of fishing. The deceased and his family members used to plant watermelons in the alluvial land. The accused claiming to be the owners of the said land used to take objection to the deceased and his family members and were giving threat to kill in case they cultivate that alluvial land. On the day of incident, Narsing (PW-5) had gone to the river to catch fish. His brother Devising (PW-6) had gone in the village on a cycle to fetch fertiliser. Their mother Chandrabhaga (PW-9) along with her daughter-in-law was looking after their watermelon crop and were busy in cutting grass. Deceased Mohan was taking his cattle towards the well. While he

*Cri. A. No. 197 of 2003, D/- 30-1-2006 (reported in 2006 (5) AIR Bom R 17 (DOC) : 2006 All MR (Cri) 1431).

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(2006) 12 Supreme Court Cases 360

(BEFORE DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.)

KANSING KALUSING THAKORE AND OTHERS .. Appellants;

Versus

RABARI MAGANBHAI VASHRAMBHAI AND OTHERS .. Respondents.

Civil Appeal No. 5089 of 2006†, decided on November 20, 2006

A. **Constitution of India — Art. 226 — Public Interest Litigation — Maintainability of — Held, it cannot be filed by a person for personal gain or private profit or political or any oblique consideration — Acquisition of lands of appellants by State Govt. — Allotment of other lands to appellants under govt. policy of rehabilitation — PIL filed against, by five persons of the village concerned on the ground that the lands allotted were *gauchar* lands (pasture lands) — Appellants not made party to the said writ petition — Petitioners had encroached upon the lands sought to be granted to appellants and were seeking to ventilate/redress their personal grievances by filing the said PIL — They acted with mala fide intentions — Held, such writ petition was an abuse of process of court — Hence, it was liable to be rejected — Even on merits the petitioners had no case as there had been no violation of legal rights so as to maintain a petition under Art. 226**

Held:

It has been held in a catena of decisions that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have locus standi and can approach the Court to wipe out the tears of the poor and needy suffering from violation of their fundamental rights but not a person for personal gain or private profit or political or any oblique consideration. (Para 24)

In the present case, the writ petition filed by the respondents herein is an abuse of the process of the court. By this PIL, the respondents sought to ventilate/redress their personal grievances inasmuch as they are the persons holding clout in the village concerned and were enjoying illegal possession in relation to several lands contained under the survey numbers involved herein. The appellants herein were deliberately not made parties to the writ petition allegedly filed in public interest. The writ petitioners are the people who encroached upon the land sought to be granted to the appellants herein and hence having no legal right to continue their illegal occupancy, devised means to approach the High Court in alleged public interest. The High Court ought to have decided the maintainability of the PIL maintained at the instance of the encroachers and land-grabbers and rejected the writ petition at the threshold. The writ petition filed by the respondents was not aimed at redressal of genuine public wrong or public injury but was founded on personal vendetta. (Para 24)

Janata Dal v. *H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36, *relied on*

Even on merits, the respondents have absolutely no case. The records filed in this case clearly go to show that there had been no violation of legal rights so as to maintain a petition under Article 226. The petitioners in the PIL had

† Arising out of SLPs (C) Nos. 124-25 of 2006. From the Judgments and Orders dated 4-8-2005 and 11-10-2005 of the High Court of Gujarat at Ahmedabad in SCA No. 14475 of 2004 and MCA for Review No. 2171 of 2005 in SCA No. 14475 of 2004 respectively

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suppressed material facts including resolutions taken by bona fide authority and acted with mala fide intentions by not making necessary and appropriate parties.

(Para 25)

B. Constitution of India — Art. 226 — Interference in administrative matters — Impermissibility — Acquisition of lands of appellants by State Govt. — Allotment of other lands to appellants under govt. policy of rehabilitation — PIL filed against, by five persons of village concerned — Imposition of conditions on appellants that they will not convert the land into NA (non-agricultural) and shall not transfer it either by sale or in any other manner — Said conditions to remain in force for 15 years — Considering the facts, held, imposition of the said stringent conditions was illegal — It amounted to judicial interference in purely administrative acts — Administrative Law — Judicial review — Judicial review of administrative action — Limits of

C. Transfer of Property Act, 1882 — S. 6 — Transfer of property — Imposition of prohibition on, under Art. 226 of the Constitution — Power in respect of — Held, transfer of property can be prohibited only by provision of law and not by judgment or direction made in writ petition under Art. 226 — Constitution of India, Art. 226 — Tenancy and Land Laws — Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948), S. 43

Where the lands of the appellants were acquired by the State Govt. for the purpose of establishment of an agricultural university and the Govt. allotted other lands to the appellants under its policy of rehabilitation, five persons of the village concerned filed a PIL before the High Court challenging the said allotment on the ground that the lands allotted to the appellants were *gauchar* lands. It was contended that the allotment/settlement of the said lands would affect the breeding of cattle and water needs of the village concerned. The High Court did not find any substance in the said contentions. However, it imposed two conditions on the appellants i.e. they will not convert the land into NA (non-agricultural) and shall not transfer it either by sale or in any other manner.

Allowing the appeal and setting aside the order imposing the said conditions, the Supreme Court

Held :

(i) In relation to interference under Article 226 in administrative matters

In the instant case, the appellants' lands were acquired by the State Government in the year 1954 and as per the government policy, in lieu of the lands of such persons affected by the takeover, allotment and/or reservation of separate land had been made to the appellants by the competent authority in the adjacent villages. The lands to be allotted to the appellants were not pasture lands but were reserved for allotment in terms of government policy. The appellants were allotted lands after about 30 years. Under such circumstances, the appellants are the ones who have suffered inequity for 30 years. The Court is not justified in imposing stringent conditions i.e. the appellants will not convert the land into NA and shall not transfer it either by sale or in any other manner and, in particular, imposing a 15-year ban upon the appellants without any rationale, reason and without any material on record. The stringent conditions imposed by the High Court are not sustainable in law and inasmuch as the same amounts to judicial interference in purely administrative acts when the allegations sought to be made are only in lieu of lands acquired earlier by the Government in furtherance of a policy decision aiming for rehabilitation.

(Para 25)

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(ii) In relation to imposition of prohibition on transfer of property under Art. 226

The High Court failed to appreciate the legal provision of Section 6 of the TP Act when the transfer of the property can be prohibited only by provision of the law and not by the judgment or direction referred in the writ petition under Article 226 of the Constitution of India. The only restriction in transferring the land is contained in Section 43 of the Bombay Tenancy and Agricultural Lands Act and such restricted tenure land can also be transferred after obtaining permission from the Collector under the Bombay Land Revenue Code. In the instant case, by adding the two conditions the appellants have been given discriminatory treatment. (Para 25)

W-M/A/35361/S

Advocates who appeared in this case :

U.U. Lalit, Senior Advocate (Atul Nanda, Ms Rameeza Hakeem, Rajesh Kumar, Ms Charu Singhal and Abhijat P. Medh, Advocates, with him) for the Appellants;

Ms Hemantika Wahi, Ms Shivangi, Ms Pinky Behera, Rajiv Mehta, Gaurav Agrawal and Siddhartha Chowdhury, Advocates, for the Respondents.

Chronological list of cases cited *on page(s)*

1. (1992) 4 SCC 305 : 1993 SCC (Cri) 36, *Janata Dal* v. *H.S. Chowdhary* 367*a*

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J.— Leave granted.

2. This is a public interest litigation (in short "PIL") by the villagers of Rasana Nana in Gujarat. Appellants 1-6, who are the respondents in the public interest litigations before the High Court, are the appellants in this appeal who also belong to the same village.

3. In this PIL, the following question of law of great public importance arises for consideration of this Court which is, "Whether the High Court failed to appreciate that the process for rehabilitation was under a policy decision of the Government of Gujarat and the lands being allotted to the appellants as an administrative act, which allotments were in lieu of the lands of the appellants acquired by the Government decades earlier, and the judicial interference in the decision-making process and policy of the Government not warranted in the facts of the case".

4. The appellants' lands were acquired by the State Government in the year 1954. This was in terms of Section 8 of the Bombay Merged Territories and Areas (Jagirs Abolition) Act of 1953. The reason for the acquirement of the lands of the appellants by the State Government was for the establishment of the Dantiwada Agricultural University. As per the government policy, lands of such persons affected by the takeover, allotment and/or reservation of separate land had been made by the competent authority in the adjacent villages, including Village Rasana Nana.

5. The appellants herein are challenging only that part of the impugned order which affects their absolute right over the land given to them in lieu of their land which was surrendered by them for the purpose of establishment of the Agricultural University.

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6. Land in Survey Nos. 125 and 126 in Village Rasana Nana though earmarked for rehabilitation was however not handed over to the persons affected by the takeover of the lands for the purpose of establishment of the University. Several correspondences were made to the competent authority but for one reason or another, the land in the said survey numbers could not be handed over. In the year 2003, some of the appellants approached the High Court through 3 separate applications contending that although most of the persons affected had been given lands as per government allotment policy dated 18-7-1973 and 11-2-1997 the appellants had been subjected to inequitable treatment. Three orders on different dates i.e. on 20-9-2003, 14-10-2003 and 26-4-2004 were passed in the aforesaid 3 applications by the High Court. Directions were given to the competent authorities to consider and examine the case of each appellant and to take appropriate decision thereafter in terms of the policy framed by the State Government.

7. On 9-8-2004, the Deputy Collector passed 3 separate orders. He verified individual cases and took a final decision after consultation with the Collector whereby the reserved lands at Survey Nos. 125 and 126 of Village Rasana Nana were directed to be granted over to the appellants who also paid the occupancy price subsequently. It is stated that the order of the Deputy Collector was in furtherance of the policy decision of the State Government and was part of an administrative act. The appellants' claims were based upon the principles of legitimate expectation and the reliefs claimed by them were equitable in nature.

8. In October 2004, five persons of the said village filed a petition before the High Court purportedly under public interest. They claimed themselves to be "public-spirited individuals". In this petition, the challenge was to the 3 orders passed by the Deputy Collector allotting land from Survey Nos. 125 and 126 of Village Rasana Nana and no challenge was made to the other allotments of the said village. It was contended that the lands allocated by this order were reserved for grazing of cattle i.e. *gauchar lands*, the allotment/settlement of which would affect the breeding of cattle in the village, such lands also serve the water needs of the village.

9. The appellants were deliberately not made parties in the writ petitions filed allegedly in public interest. According to the appellants, the petitioners in the alleged PIL are people holding clout in Village Rasana Nana and who were all along enjoying illegal possession of the lands contained in Survey Nos. 125 and 126.

10. In December 2004, an application was filed by the present appellants before the High Court and impleaded as respondents in the alleged PIL. This application was allowed by the High Court. The Sarpanch of the village filed an affidavit-in-reply opposing the relief prayed for in the writ petition. It was stated that the lands in Survey Nos. 125 and 126 were deemed to be government lands w.e.f. 1-8-1954 and were never gauchar lands or vested in the panchayat body.

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11. The appellants herein also filed an affidavit-in-reply contending that:

(*a*) There had been no violation of legal rights so as to maintain a petition under Article 226 of the Constitution of India.

(*b*) The petitioners in the alleged PIL had made false statements inasmuch as they were headstrong persons of the village having political clout.

(*c*) The petitioners in the PIL had suppressed material facts including resolutions taken by the panchayat authority.

(*d*) The petitioners in the PIL had acted with mala fide intentions by not making necessary and appropriate parties.

12. By virtue of the impugned order dated 4-8-2005, the High Court arrived at a conclusion that there was hardly any material to indicate that the land in question was pasture land and that such land was in fact reserved for the rehabilitation of persons who were adversely affected by the acquisition of their lands for the establishment of the Agricultural University and that the appellants herein had an existing right in terms of the government policy and hence entitled to equitable relief.

13. The High Court did not find any infirmity in the order of the Deputy Collector dated 9-8-2004. However, an argument was advanced on behalf of the public interest litigants contending that the grantees i.e. the appellants herein would not use the land for agricultural purposes and would sell it away. The High Court imposed the following conditions:

I. Respondents 4 to 53 will not convert the land into NA. But they will use the land only for agricultural purpose.

II. Respondents 4 to 53 shall not transfer the land either by sale or in any other manner directly or indirectly by executing power of attorney, to any other party and even if such power of attorney is already given in favour of the third party, the respondents concerned shall revoke the same before receiving the possession.

14. The aforesaid conditions imposed by the High Court will remain in force for a period of 15 years from the date of possession of the land.

15. The Deputy Collector, Palanpur was directed to see that these respondents give undertaking in writing to comply with the aforesaid conditions imposed by the High Court. Unless such undertaking is given, the possession shall not be granted to such respondents. The Deputy Collector was further directed to ensure before giving possession of land that no deed of power of attorney to be executed by any of the respondents in favour of any other party. If it is found to be so, he shall forthwith call upon the said respondent to revoke it and render it ineffective. He is further directed that unless there is strict compliance with the aforesaid terms and conditions by the said respondents, he shall not put them into possession of the land in question.

16. The High Court, thereafter, directed the Deputy Collector to give possession to the appellants only after taking written undertakings of compliance with the aforesaid conditions. It is this portion of the order which the appellants have challenged.

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17. The appellants preferred a revision petition before the High Court which, on 11-10-2005, was also dismissed. Aggrieved by the orders passed by the High Court, the appellants have preferred the above civil appeal.

18. We heard Mr U.U. Lalit, learned Senior Counsel for the appellants and Ms Hemantika Wahi, Mr Rajiv Mehta and Mr Gaurav Agrawal assisted by Mr Siddhartha Chowdhury, learned counsel for the respective respondents.

19. We have perused the resolution passed by the Government of Gujarat dated 18-7-1973, 11-2-1997 and the PIL filed by the respondents herein and the counter-affidavit and reply filed by the respective parties and also the various orders passed by the High Court of Gujarat including the judgment in appeal.

20. Mr U.U. Lalit, learned Senior Counsel took us through the relevant pleadings and also the judgments and other records. He contended that the High Court was not correct in its approach of imposing further conditions once it was evident that the lands to be allotted to the appellants were not pasture lands and reserved for allotment in terms of the government policy. He further contended that the conditions imposed by the High Court were not within the ambit and scope of the PIL more particularly when the maintainability of the PIL was in issue and not decided. It was further urged that the appellants who were being allotted lands after about 30 years suffered inequity by imposition of such conditions by the High Court inasmuch as many persons (whose lands had also been taken and who were given/allotted lands decades earlier) were also subjected to such restrictions and conditions. He also submitted that the High Court was not correct in imposing a 15-year ban/restriction upon the appellants without any rationale, reason and without any material on record. According to Mr Lalit, the stringent conditions imposed by the High Court are not sustainable in law inasmuch as the same amounts to judicial interference in purely administrative acts where there is no involvement of any mala fide and allocations sought to be made are only in lieu of lands acquired earlier by the Government, in furtherance of a policy decision aiming for rehabilitation. Arguing further, Mr Lalit submitted that the High Court was also not correct in appreciating the fact that the only restriction in transferring the land was provided for in Section 43 of the Bombay Tenancy and Agricultural Lands Act and such restricted tenure land can also be transferred after obtaining permission from the Collector under the Bombay Land Revenue Code. In the instant case, by adding these two conditions, entire transfer to the appellants was given a discriminatory treatment. Concluding his argument, Mr Lalit submitted that the High Court was not right in presuming without any material that the appellants/allottees will sell their land to the builders for constructing commercial complex.

21. Learned counsel appearing for the State and for the Sarpanch invited our attention to the counter-affidavit filed in the writ petition. The Deputy Collector stated that the petitioners in the PIL had personal interest involved

and they were actually encroachers and had been removed therefrom and that the process of rehabilitation was a policy decision and that the public interest litigants do not deserve any relief in the writ petitions.

22. The Sarpanch of Village Rasana Nana filed an affidavit-in-reply opposing the relief prayed for in the writ petition. It was stated that the lands in Survey Nos. 125 and 126 were deemed to be government lands w.e.f 1-8-1954 and were never gauchar lands and are vested in the panchayat body. It was further submitted that after receipt of the notice from the High Court, the same was placed before the Panchayat in its meeting dated 16-2-2005 and the Panchayat after detailed deliberation and careful consideration took the decision by resolving that the Panchayat had no objection in the land being granted to the ousted persons on account of setting up of the Agricultural University.

23. Two panchnamas were made in furtherance of orders made by the Circle Officer and Surveyor of the Survey Department. It is recorded that all encroachments in the lands sought to be granted were unauthorised and possession was recovered. Mr Gaurav Agrawal, learned counsel for the contesting respondent, after reiterating the contentions raised in the writ petition, submitted that (*a*) the lands allocated by order dated 9-8-2004 were not available for any purpose other than to fulfil the water needs for the population of the village, (*b*) lands so allotted were reserved for grazing i.e. gauchar land (pasture), and (*c*) land allocated vide order dated 9-8-2004 would affect cattle breeding.

24. We have given our careful consideration to the rival submissions made by the respective counsel appearing for the respective parties. The writ petition filed by the respondents herein is an abuse of the process of the court. By this PIL, the respondents sought to ventilate/redress their personal grievances inasmuch as they are able to holding clout in Village Rasana Nana and were enjoying illegal possession in several lands contained under said Survey Nos. 125 and 126. The appellants herein were deliberately not made parties to the writ petition allegedly filed in public interest. It is a matter of record that the writ petitioners are the people who encroached upon the land sought to be granted to the appellants herein and hence having no legal right to continue their illegal occupancy, devised means to approach the High Court in alleged public interest. This would be evident from the affidavit of the Deputy Collector filed on 24-3-2005. The maintainability of the writ petition at the instance of the respondents was specifically raised before the High Court. The maintainability of the PIL which was in issue was unfortunately not decided by the High Court. The High Court, in our opinion, ought to have decided the maintainability of the PIL maintained at the instance of the encroachers and land-grabbers and rejected the writ petitions at the threshold. This Court in a catena of decisions held that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have locus standi and can approach the Court to wipe out the tears of the poor and needy suffering from violation of their fundamental rights but not a person for personal gain or private profit or political or any oblique

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consideration. The High Court ought to have rejected the writ petition at the threshold as observed by this Court in *Janata Dal* v. *H.S. Chowdhary*[1]. In our opinion, the writ petition filed by the respondents was not aimed at redressal of genuine public wrong or public injury but was founded on personal vendetta. It is the duty of the High Court not to allow such process to be abused for oblique considerations and the petitions filed by such busy bodies deserves to be thrown out by rejection at the threshold and in appropriate cases with exemplary costs.

25. Even on merits, the respondents have absolutely no case. The records filed in this case clearly go to show that there had been no violation of legal rights so as to maintain a petition under Article 226 of the Constitution of India. The petitioners in the PIL had suppressed material facts including resolutions taken by bona fide authority and acted with mala fide intentions by not making necessary and appropriate parties. We have already reproduced the conditions/restrictions imposed by the High Court against the appellants herein. In the instant case, the appellants' lands were acquired by the State Government in the year 1954 and as per the government policy, lands of such persons affected by the takeover allotment and/or reservation of separate land had been made by the competent authority in the adjacent villages. It is also evident that the lands to be allotted to the appellants was not pasture land and reserved for allotment in terms of government policy and that the appellants were allotted lands after about 30 years. Under such circumstances, the appellants are the ones who have suffered inequity for 30 years. The Court is not justified by the imposition of such stringent conditions and, in particular, imposing a 15-year ban upon the appellants without any rationale, reason and without any material on record. The stringent conditions imposed by the High Court are not sustainable in law and inasmuch as the same amounts to judicial interference in purely administrative acts when the allegations sought to be made are only in lieu of lands acquired earlier by the Government in furtherance of a policy decision aiming for rehabilitation. By imposing such conditions, the High Court has jeopardised the rights of the appellants who have been displaced and suffering for more than 3 decades. The High Court also failed to appreciate the legal provision of Section 6 of the TP Act when the transfer of the property can be prohibited only by provision of the law and not by the judgment or direction referred in the writ petition under Article 226 of the Constitution of India. The only restriction in transferring the land is contained in Section 43 of the Bombay Tenancy and Agricultural Lands Act and such restricted tenure land can also be transferred after obtaining permission from the Collector under the Bombay Land Revenue Code. In the instant case, by adding these two conditions the entire transfer of the appellants are given discriminatory treatment. The Government of Gujarat, by its resolution dated 18-7-1973, considered the question of granting the

1 (1992) 4 SCC 305 : 1993 SCC (Cri) 36

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land to the affected account-holders of these villagers in lieu of the land at the place possible, was under consideration of the Government and after consideration the Government has resolved to adopt the policy to the affected account-holders.

26. It is resolved to grant the land to the account-holders, whose lands shall be acquired for establishing the headquarters of the Agricultural University, including the main campus, as per the following norms in cases where the land shall be granted to them without the irrigation facility:

Land to be acquired/acquired land	*Land to be granted in exchange*
1. Up to 4 acres	Entire land
2. 4 acres up to 12 acres	4 acres
3. 12 acres to 15 acres	1/3rd portion of the acquired land
4. Exceeding 15 acres	5 acres

27. If the land, which is likely to get the benefit of irrigation in near future, will be granted to the affected account-holders, it is resolved to grant the land to them as per the following norms:

Land to be acquired/acquired land	*Land to be granted in exchange*
1. Up to 3 acres	Entire land
2. Above 3 acres and up to 9 acres	3 acres
3. Above 9 acres and up to 12 acres	1/3rd portion of the acquired land
4. Above 12 acres	4 acres

28. In our opinion, none of the appellants have violated any of the rights guaranteed to the petitioners in the writ petition either under the Constitution or under any other law and hence the PIL filed by the respondents herein is not at all maintainable and is liable to be dismissed. Now that the civil appeals are allowed, we direct the respondent authorities to grant possession of the land immediately to the appellants without insisting for any undertaking from the appellants as directed by the High Court in its impugned judgment. Since the patience of the appellants has been tested for so long by the State Government and other authorities and also the public interest litigant, it is not proper for the Government and other appropriate authorities to ask the appellants to wait any longer.

29. We direct the Government and the other appropriate authorities to immediately hand over possession of the land allotted to them by way of rehabilitation.

30. Accordingly, we dismiss the writ petitions filed by the respondents and allow the above civil appeal and set aside the order impugned in this civil appeal passed by the High Court of Gujarat. However, we order no costs.

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MANU/MH/1478/2007

Equivalent Citation:

IN THE HIGH COURT OF BOMBAY

W.P. Nos. 4813 and 4816 of 2007

Decided On: ??.08.2007

Appellants: **Amit Vishnupant Khot**
Vs.
Respondent: **Union of India and others**

Hon'ble Judges/Coram:
Swatanter Kumar, C.J. and Smt. Ranjana Desai, J.

Counsels:
For Appellant/Petitioner/Plaintiff: A.M. Kanade and R.S. Deshmukh

For Respondents/Defendant: P.S. Ghadigaonkar, Government Pleader for Respondent Nos. 1, 2, 5 and 8, P.V. Mandlik for Respondent No. 7, Alok Sharma for Union of India and S.V. Advani for Respondent No. 17

Subject: Civil

Catch Words

Mentioned IN

Acts/Rules/Orders:
Maharashtra Regional And Town Planning Act, 1966 - Section 134, Maharashtra Regional And Town Planning Act, 1966 - Section 14, Maharashtra Regional And Town Planning Act, 1966 - Section 22, Maharashtra Regional And Town Planning Act, 1966 - Section 31, Maharashtra Regional And Town Planning Act, 1966 - Section 31(1), Maharashtra Regional And Town Planning Act, 1966 - Section 37

Citing Reference:

Discussed

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Case Note:

Property - Protection under law - Maharashtra Regional and Town Planning Act, 1966 - Division Bench granted order of stay and held that pending hearing and final disposal of Petition, a monthly report should be called by this Hon'ble High Court from Conservation committee of steps measures and efforts taken - Moreover AMC should be directed not to demolish destroy any of gates or listed monuments - Hence, this Petition - Whether, old Court building was monument or heritage building at all - Held, old District Court complex at Aurangabad was neither heritage nor historical monument entitling any protection under law - Furthermore, there was no proposal by authorities to declare same as such - According to Bar Association itself, it was necessary to demolish entire structure - In face of affidavit filed by Executive Engineer that they were proposing to keep spacious domes at back and front of building indicating historical monument - Moreover, stand taken by authorities for delay was grant of interim stay by Court - Therefore, public interest was bound to suffer and common litigants may face threat to their lives if interim order was not vacated - However, these were matters to be examined by specialised bodies and thereafter they fall within domain of policy framers of State - With exception apart, in matters of policy, unless and until patently violative of fundamental protection or ex facie arbitrary or discriminatory, Court should be slow in interfering therewith - Hence, there was no merit in these Petitions insofar they relate to old Court building at Aurangabad - Petitions dismissed.

Ratio Decidendi

Court shall not interfere in matters of policy unless and until patently violative of fundamental protection or ex facie arbitrary or discriminatory."

JUDGMENT

Swatanter Kumar, C.J.

1. Writ Petition Nos. 2953 and 3230 both of 2003 were filed at the Aurangabad Bench of the Bombay High Court. The Division Bench of the Court vide its order dated 22nd September, 2003 granted interim relief's in terms of prayer clauses (d) and (e). This order of stay has continued for all these years. The Aurangabad District Bar Association filed an application for intervention being Civil Application No. 789 of 2007. This application was ordered to be heard along with the main petitions.

2. When the matter came up before the Bench at Aurangabad on 16th June 2007, it was felt that as the matter related, and is likely to affect the entire over administration of justice in the State of Maharashtra, even in relation to other buildings, it was considered appropriate to transfer the cases to the principal Bench at Bombay. Accordingly both the above petitions were transferred to Bombay, renumbered as Writ Petition Nos. 4813 and 4816 of 2007 respectively and were heard together.

3. The petitioner in Writ Petition No. 4816 of 2007 claims to be convenor of " Indian National Trust of Art and Cultural Heritage" which is a Non-Governmental Organisation (NGO). The Aurangabad Chapter with its team of enthusiastic and dedicated members and workers are enduring to keep historical monuments and heritage intact. In order to preserve and protect the monuments, a list had been prepared. However, due care was not taken by the concerned departments to protect these monuments. Persuasion of the petitioners fell on deaf ears of the respondents and more particularly the Archeological Survey of India, State Archeology and Museum Department and the Aurangabad Municipal Corporation, which did not take steps to protect the old monuments. The petitioner, who claims to be an historian of international repute and has written various books on historical and archaeological subjects in and around Aurangabad, was a Professor in Marathwada University. On 7th July, 2003 they noticed that one of the darwajas (khas darwaja) situated at Jinsi, Aurangabad was in a dilapidated condition and some part of it had fallen down. The residents in and around the said gate made complaint to the Aurangabad Municipal

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Corporation. The Corporation passed an order to raze down the said khas gate. When they were demolishing the said gate, at the intervention of the petitioners and other persons the demolition was stopped.

4. The petitioner has annexed to the writ petition a list of historical monuments in Aurangabad city for protection under the Heritage Regulations. In this list nearly 155 buildings or places have been included. At Sri No. 140 of the said list the Sessions Court, Adalat Road, Aurangabad is also named as a historical monument building, requiring protection as a heritage building or even otherwise. It is also the case of the petitioner before the Court that the Revised Draft Development Plans for Aurangabad, including old municipal limits for the period 1995 to 2015 prepared under section 31 of the Maharashtra Regional and Town Planning Act, 1966 and submitted to the Government impose restrictions on the area declared as monument area so that there is proper protection, conservation and preservation of this area. The authorities are vested with wide powers under various provisions of law to protect such monuments but the authorities have failed to take appropriate action. According to the petitioner, there is total apathy and negligence on the part of the Archeological Surveyor of India and other authorities, including the Aurangabad Municipal Corporation, to protect historical places and, therefore, it was submitted in the petitions that the Court should appoint a committee comprising of various persons and Divisional Commissioner to implement the Heritage Regulations. On this premise, it was prayed as under:

a) This writ petition be listed as a public interest litigation.

b) That, a writ of mandamus or a writ in the nature of mandamus or order or direction be issued to the Aurangabad Municipal Corporation not to demolish' destroy any of the gates mentioned hereinabove and listed as well as 52 gates in the city and the 154 monuments listed by the INTACH mentioned in Exh G

c) That a direction or order be issued to appoint a committee of Heritage Conservation Committee as contemplated by the Regulation 67 dated 24th April, 1995 of the Heritage Regulations to be formed and the certain members of the INTACH may also be included in the same with further appropriate directions from this Court for allocation of funds from the ASI to the said Conservation committee enabling them to maintain preserve, protect and conserve the listed monuments mentioned hereinabove at Exh G which includes the gates.

d) Pending the hearing and final disposal of this writ petition, a monthly report should be called by this Hon'ble High Court from the said Conservation committee of the steps measures and the efforts taken.

e) Pending the hearing and final disposal of this writ petition, the AMC be directed not to demolish destroy any of the gates or listed monuments of Exh G.

f) Pending the hearing and final disposal of this writ petition, the authorities namely the ASI, State, Archeology, AMC and the Police Commissioner be directed to extend all the help and assistance needed by the said Conservation committee for the purposes of protection, preservation, upkeep and maintenance of all the ancient historical monuments listed in Exh G with immediate effect.

5. Separate affidavits have been filed on behalf of State of Maharashtra, Municipal Corporation of Aurangabad, Archeological Department of the Central Government, State Archeological Department and Public Works Department.

6. As stated above, interim order restraining the authorities from demolishing any of the gates or monuments listed in Exh G. was passed on 22nd September, 2003. The list of monuments includes old District Court building at serial No. 140.

7. As stated in the affidavit filed by Vithal Gangaram Bodkhe, Executive Engineer, P.W.D. Aurangabad ,the old building of District Court was constructed in 1930 AD and the brick work of the walls was in lime and mortar. The roof of the building is jack arch style, made up of same material with iron girders. Such roofs are damaged because of rusting and there is every possibility of the entire old building collapsing at any time. It is also stated that the existing building was totally inadequate to accommodate the requisite number of Court rooms and in order

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to meet the present and future demand, a building of five floors with 49 spacious Court rooms with all essential amenities was proposed to be constructed after demolition of the old building. He has also stated that the administrative approval to the estimates for construction of new Court building was approved on 8th June, 2005 at Rs. 15,36,41,000. The work had already been started in 2005. On 19th March, 2005 the foundation stone of the new building was laid. In fact it is stated that part construction has already been made. In this affidavit it is specifically averred that the Court of 3rd Joint Civil Judge, Aurangabad, was functioning in the said building and a portion of the jack arch roof of the said Court had collapsed on 6-9-2006, fortunately it was night time and as such no untoward incident took place. The Court hall was immediately got vacated and temporary roof has been put up. It was brought to our notice that the Court building was in deprecated condition, even roof of one of the Court rooms had fallen and there was a great escape for the person in the room. The building roof is stated to have been redone. Because of intervention of the Bar Association, Aurangabad, which seriously contested continuation of the interim orders in regard to Court complex at Aurangabad, it was felt that it would be expedient to adjudicate the same on merits.

8. First and foremost question that we are required to decide is whether the old Court building is a monument or heritage building at all. In this regard the affidavits of various authorities can usefully be referred to at this stage. In the affidavit of the Executive Engineer, it is specifically stated that the entire building is in a deprecated condition and may collapse at any time on its own. In the affidavit filed by the Municipal Corporation, Aurangabad on 12th June, 2007 it is stated that draft Regulations were prepared. A list of 156 monuments in Aurangabad city for the purpose of Heritage Regulations framed in accordance with the provisions of Maharashtra Regional and Town Planning Act, 1966 was prepared. Objections were invited, parties were heard and keeping in view various factors, including objections of the Bar Association and the Executive Engineer's report in relation to the old District Court building, it was decided to delete the said building from the list, and the same has already been submitted to the government for approval.

9. The Maharashtra Regional and Town Planning Act, 1966 (Act for short) provides for preparation, submission and sanction of a development plan. Section 22 of the Act which provides for the contents of the plans states that the development plan shall provide for specified matters including preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value and all heritage buildings and heritage precincts". In exercise of powers under section 31(1) of the Act, the State Government by Resolution dated 21-4-1995 sanctioned Development Control Regulation No. 67 along with appendix VIIA as specified in the schedule appended to the resolution and fixed 1st June, 1995 as the date on which the Regulation 67 would come into force. Regulation 67 broadly deals with the Conservation of listed buildings, areas, structures and precincts of historical and/or aesthetical and/or architectural and/or cultural value (heritage buildings and heritage precincts). Regulation 67(2) inter alia forbids any addition or alteration of buildings which were either listed as heritage buildings or as heritage precincts except with the prior written permission of the Commissioner. Sub-regulation (2) of Regulation 67 further provides that the Commissioner shall act on the advice of/in a consultation with the Heritage Conservation Committee to be appointed by the Government provided that 'in exceptional cases for reasons to be recorded in writing the Commissioner may overrule the recommendations of the Heritage Conservation Committee.

10. Regulation 67 falls under the schedule and requires conservation of listed buildings etc. In terms of clause (1) of the said schedule it is to be applied to such places, which shall be listed in the notification to be issued by the Government. The Government in exceptional cases, for reasons to be recorded by the Commissioner, may overrule the recommendations of the Heritage Conservation Committee and this power in the wisdom of the rule framing authority is not to be delegated. It appears that the heritage buildings and precincts have been classified in three categories viz Grades -I, II and III. Grade I consists of buildings and precincts of national or historical importance, embodying excellence in architectural style, design, technology and material usage. These may be associated with a great historical event, personality, movement or institution. They have been and are the prime landmarks of the city.

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Grade II buildings and precincts are of regional or local importance, possessing special architectural or aesthetical merit, cultural or historical value, though of a lower scale than in Heritage Grade I. These are local landmarks, contributing to the image and identity of the city. Grade in structures are important for the town scape, they evoke architectural aesthetic or sociological interest, though not as much as in Grade II. These contribute to determine the character of the locality, and can be representative of the life style of a particular community or region and may also be distinguished by setting on a street line or special character of the facade and uniformity of height, width and scale. The Government even earlier had passed a Resolution dated 30th September, 2000 called Heritage Regulation. It was stated that this Regulation would be made applicable to the cities stated therein including the City of Aurangabad under section 37 of the Act. Vide letter dated 8th May, 2003 Exh F the Divisional Commissioner, Aurangabad had confirmed to the Government to apply Heritage Regulation to Aurangabad city.

11. In light of the above provisions, we are concerned with the old District Court building at Aurangabad, for which the interveners prayed for the relief's claimed by them in this petition. The Archeological Survey of India by their affidavit have stated that only two sites i.e. Aurangabad Caves and Bibi ka Mukbara have been declared as historical monuments under section 2(d) of the Ancient and Historical Monuments of Archeological Sites and Remains (Declaration of National Importance) Act, 1951. It is not stated in the affidavit that the old District Court complex is heritage building. In the affidavit filed by the officer concerned on behalf of respondent No. 2 it is stated that the Court complex is not heritage building as per their record and Aurangabad Municipal Corporation has to constitute a Heritage committee within 60 days, which then has to consider the matter in accordance with law. It may be noticed that during the pendency of the petitions the Heritage committee had been constituted. The Commissioner, Aurangabad Municipal Corporation filed detailed affidavit and it was stated that the Heritage Committee has not recommended the District Court complex to be treated as heritage building. A general body meeting of the Corporation was held on 7th October 2003 and it was decided to constitute the Committee of the Corporators to inspect the monuments and prepare a report to take final decision under the Heritage Regulations. As a result of this proceeding the Corporation had recommended to the State Government to delete Item No. 140 from the Draft List prepared for declaration of the heritage buildings or historical monuments. Respondent Nos. 3 and 4 have filed an additional affidavit dated 10th April, 2007 stating that Aurangabad was not under the jurisdiction of the Archeological Survey of India and the same is centrally protected monument as per their stand.

12. The affidavit of the Executive Engineer further stated that there is dire requirement for a new Court complex. Various difficulties were being faced in the old Court complex including its deprecated condition and possible danger to human lives. In paragraph 6 of the said affidavit it has been categorically stated that " The Directorate of State Archeological Department informed that the old district Court building is not a historical monument". Vide Government Resolution dated 8th June, 2005 the administrative approval to the tune of Rs. 15,36,41,000/- was given by the Government for construction of a new Court building, work for which has already commenced. It has been stated in the affidavit that in order to keep the historical memories of the old buildings the Chief Architect Mumbai has proposed five gracious domes on the front and rear sides of the building. It is specifically averred that it is neither safe nor administratively viable to treat this building as a heritage or historical monument.

13. A public interest litigation essentially must be in larger public interest and it should not be permitted to defeat the said purpose under the pretext of listed buildings, particularly when it is admitted that neither they are protected monuments nor heritage buildings. In the case of Bombay Dyeing and Manufacturing Co Ltd. vs. Bombay Environmental Action Group and ors, MANU/SC/1197/2006 : (2006) 3 SCC 434, the Supreme Court clearly stated that while entertaining a public interest litigation several aspects of public interest being involved, the Court should find out as to how the greater interest should be sub-served and for that purpose a balance should be struck and harmony should be maintained between several interests.

14. Judicial intervention or judicial activism is a concept relatable to the facts appearing on record

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before a Court in a given case, but the golden principle is that the Court will exercise such power with caution and ensure that greater public interest, progress, essential amenities and public importance are not made to suffer. It is a known fact that in Government projects, progress is done with the public funds. Merely on certain assumption or presumption objection to the commencement and progress of such projects for years together would serve no public purpose or interest and in fact of ends of justice. It will be unfair for the Court to presume that the building is a heritage or monument when in fact it is not and all the concerned authorities have taken a categorical stand that they do not even propose to declare the said property as a heritage or monument property. On the contrary they have recommended deletion of the said building from the draft list. It will be of some importance to notice that there is categorical stand taken by the authorities that the building can collapse of its own any time and this is duly supported by the incident of 6th September, 2003, when the roof of one of the Court room collapsed. This is a place visited by hundreds of people every day and any untoward incident in future could prove fatal. There is no justification before the Court to continue the same particularly when it is not covered under the Heritage Regulations.

15. Common stand taken by all the authorities leaves no manner of doubt in our mind that the old District Court complex at Aurangabad is neither a heritage nor historical monument entitling any protection under the law. Furthermore, there is no proposal by the authorities to declare the same as such. During the course of hearing the learned counsel for the petitioners had even argued that if the construction has to go on it may but old building should remain as 1/6th area has to be constructed. This argument is without any merit. The construction is obviously to be raised on a part of the plot but the remaining part has to be used for public facilities. According to the Bar Association itself, it is necessary to demolish the entire structure. In face of the affidavit filed by the Executive Engineer that they are proposing to keep spacious domes at the back and front of the building indicating historical monument, the purpose in the case is achieved and it is not necessary for us to deliberate on this issue any further. Let us consider the adverse consequence of continuing the stay or keeping this petition pending in relation to that building. Huge amount has already been sanctioned, part of the construction has started, entire project is time-bound for a period of 33 months, out of which more than 15 months are already over and not even 5% construction has been completed. The stand taken by the authorities for the delay is the grant of interim stay by the Court. We are of the considered view that public interest is bound to suffer and common litigants may face threat to their lives if the interim order is not vacated. Furthermore these are matters to be examined by specialised bodies and thereafter they fall within the domain of the policy framers of the State. With exception apart, in matters of policy, unless and until patently violative of fundamental protection or ex facie arbitrary or discriminatory, the Court should be slow in interfering therewith. In the case of Consumer Guidance Society of India and ors. vs. Union of India and ors. PIL No 124 of 2006 decided on 19-7-2007 the Division Bench of this Court commenting upon the scope of such matters held as under:

The present case hardly falls in the exception to the Rule. Framing of policy necessitating financial burden on the State exchequer is something which should be done by the State and competent authority. We have already indicated that there are no justifying circumstances in this case which would persuade us to issue the direction prayed and very limited is the scope of judicial review inconsistent with the Constitution and the law or so arbitrary or irrational or tantamounting to abuse of power, judicial intervention would normally be not necessitated. It will be useful at this stage to refer to the judgments in Balco Employees' Union (Regd) vs. Union of India and ors., MANU/SC/0779/2001 : (2002) 2 SCC 333 and Federation of Railway Officers Association and others vs. Union of India, MANU/SC/0231/2003 : (2003) 4 SCC 289. In the case of Federation of Railway Officers Association (supra) the Supreme Court observed as under:

In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws

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or arbitrary or irrational or abuse of power, the Court will not interfere with such matters.

The Appellate Tribunal to be known as the "Telecoms Disputes Settlement and Appellate Tribunal" was established under section 134 of that Act. In terms of section 14, the Central Government by notification established the Tribunal to adjudicate any or all of the disputes specified under that provision. Upon consideration of the Appellate Tribunal in terms of section 14B(c) the Appellate Tribunal may exercise jurisdiction by Benches. The Benches shall ordinarily sit at New Delhi and such other places as the Central Government may in consultation with the Chairperson of the Appellate Tribunal, notify. In the event such Benches are constituted then section 14B(d) requires the Central Government to define areas of jurisdiction which each Bench may exercise. In other words, the constitution of the Appellate Tribunal, its Benches and their respective jurisdictions shall be controlled by the Central Government which has to issue notification, of course such notification or decision is to be taken in consultation with the Chairperson of the Appellate Authority. It is clear from the bare reading of this provision and the scheme of the Act that consultation has to be an effective and meaningful one as the Chairperson of the Appellate Authority would be in a better position to give objective consultation which would be based upon hard reality of the constitution of the Tribunal....

16. A reference can also be made to the judgment of the Supreme Court in the case of Gurpal Singh vs. State of Punjab, MANU/SC/0381/2005 : (2005) 5 SCC 136 wherein it was held as under:

The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this Court in various cases. The Court has to be satisfied about (a) the credentials of the applicant, (b) the prima facie correctness or nature of information given by him, (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interest; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others, and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The Court has to act ruthlessly while dealing with impostors and busybodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

17. Keeping in view the above facts and the settled position of law, we find no merit in these petitions insofar they relate to old Court building at Aurangabad (Serial No. 140 in the draft list). Resultantly petitions in that regard are dismissed. Interim order dated 22nd September, 2003 stands vacated. We do express a pious hope that the authorities concerned would take all possible steps to ensure that the Court complex is constructed within the stipulated time and without further additional burden on the State exchequer.

18. In regard to other buildings/sites stated in the draft list, we direct the Heritage committee, Municipal Corporation, Aurangabad and the State Government to take effective steps expeditiously and to prepare final list of buildings/ monuments/sites etc. which are entitled to protection of being heritage buildings or historical monuments in accordance with the provisions of the MRTP Act and Maharashtra Ancient Monuments, Archaeological Sites and Remains Act, 1960. We also do hope that such exercise will be completed by the authorities within a period of six months from the date of pronouncement of this judgment.

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MANU/TN/1641/2003

Equivalent Citation: 2003(4)CTC513

IN THE HIGH COURT OF MADRAS

W.P. No. 31689 of 2002 and W.P.M.P. No. 46167 of 2002

Decided On: 17.11.2003

Appellants: **Indian National Trust for Art and Cultural Heritage (INTAVH), rep. by its Trustee, Mr. P.T. Krishnan**
Vs.
Respondent: **Chennai Metropolitan Development Authority, rep. by its Member Secretary and Ors.**

Hon'ble Judges/Coram:
B. Subhashan Reddy, C.J. and K. Raviraja Pandian, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Sriram Panchu, Senior Counsel for N.L. Rajah, Adv.

For Respondents/Defendant: V. Perumal, Adv. for Respondent No. 1, P. Bagyalakshmi, Adv. for Respondent No. 2, A. L. Somayaji, Senior Counsel for R. Yashod Vardhan, Adv. for Respondent No. 3

Subject: Constitution

Catch Words

Mentioned IN

Acts/Rules/Orders:
Constitution of India - Article - 300A

Cases Referred:
State of Madhya Pradesh and Anr. v. Thakur Bharat Singh, AIR 1967 SC 1170; Bishamber Dayal Chandra Mohan etc. v. State of U.P. and Ors. etc., AIR 1982 SC 33; Jilubhai Nanbhai Khachar etc. v. State of Gujarat and Anr., AIR 1995 SC 142

Disposition:
W.P. dismissed

Case Note:

Constitution - right - Article 300A of Constitution of India - writ filed to restrain respondent No. 3 from exercising right over her property - petitioner claimed building in dispute is heritage building -

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it could not be demolished - respondent No. 3 claimed suit property is her own property and no law prohibits her to exercise right over suit property - whether restricting respondent No. 3 is deprivation of her right - Article 300A provides that no person shall be deprived of his property except by authority of law - petition dismissed.

ORDER

B. Subhashan Reddy, C.J.

1. This writ petition has been filed as a pro bono publico seeking restraint against the 3rd respondent from exercising her rights over the property, in which the Madras Club is situated. Planning to build a new structure on the said property, by demolishing the old structure, the 3rd respondent has applied to both the first and second respondents for the grant of necessary permissions. The first respondent is the Chennai Metropolitan Development Authority vested with the power of granting planning permission, while the second respondent is the Municipal Corporation of Chennai vested with the power of sanctioning permissions for both demolition of existing structures and also construction of new structures in its place.

2. The plea of the writ petitioner is that the building with its appertaining land, whole of which ad measure 20 acres, is a heritage building, and it has been identified as such by the Heritage Advisory Committee, which was formed to advice CMDA i.e., the 1st respondent, and being heritage building, it cannot either be permitted to be demolished or to make new construction thereon.

3. Respondents 1 to 3 had filed separate counters stating that there is no law to declare the above property as a heritage property, and to restrain the 3rd respondent from either demolishing the same or putting up new structures in its place. It is the specific stand of the 1st respondent that though the government has appointed a Committee in G.O.Ms.No. 179 H & UD dated 25.5.1998 to look after the matter relating to enactment of the Heritage Act, no such Act has been enacted, and that Rule 22 of the Development Control Rules is the only law governing the subject.

4. The 2nd respondent - Municipal Corporation has also taken a similar stand, and submitted particulars of the application made by the 3rd respondent seeking permission for demolition of the structures, and the grant of the same by it, owing to the dilapidated condition of the building. The application by 3rd respondent was filed on 13.4.1998 and the permission by the 2nd respondent was granted on 30.4.1998. It is also the stand of the 2nd respondent that in the tentative list of heritage buildings, the above building do not find place, and that there is no approved list of heritage buildings notified by the Government till this date. Even though proceedings were issued to conduct a meeting for the enactment of heritage legislation for Tamil Nadu, no such legislation has been enacted, and the draft rules, which were proposed, have never been translated into statutory one. It is emphatically stated by the 2nd respondent that the above building is not a heritage building, that there is no declaration or classification as such, either passed by the Government or enacted by the legislature, declaring the above building as heritage building, and that the above building has got no historical significance. Further the above building is in a dilapidated condition endangering the life of the general public, and for public safety and in the interest of public the building has got to be demolished, as such permission was accorded long back on 30.4.1998, whereas the writ petitioner's application objecting demolition was filed only on 18.7.2002.

5. Similar is the stand of the 3rd respondent, who is the owner of the property. She stated in her counter that the building is not a heritage building, that there is no law prohibiting her either from demolishing the same or from constructing new structures in its place, and that the old structure was in a dilapidated condition, and necessarily to be demolished, for which

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permission was sought for, by agreeing to give 10% Open Space Reservation Area to CMDA, as per the planning permission of the 1st respondent-CMDA, and the structure, which is existing in the 10% area to be offered to CMDA, has to be demolished, and vacant land alone has to be given to CMDA towards Open Space Reservation Area. It is stated by the 3rd respondent that as per the demand raised by the 1st respondent, she had remitted a total amount of Rs. 43,73,000 to the 1st respondent towards development charges, regularization charges and security deposit, Rs. 9,70,000 to the Chennai Metropolitan Water Supply and Sewerage Board towards infrastructural development charges, Rs. 2,65,505 to the 2nd respondent towards demolition charges, and the 2nd respondent had also started demolition from 19th of July, 2002, but further demolition was stayed pursuant to the interim order passed by this Court on 31.07.2002. It is pleaded by the 3rd respondent that the Club cannot be termed as heritage building, and merely because the building is old and dilapidated, it will not be qualified as heritage building, and in any event, there is no statute or any other law preventing her from exercising her rights in the way she deems fit and proper. However, the 3rd respondent in paragraph-8 of her counter submitted that a portion of the building, which contains the wide balustraded verandah and the original reading room, is not going to be demolished and the same is proposed to be renovated and then preserved, while other structures have got to be demolished and after demolition 10% Open Space Reservation Area has to be handed over to the 1st respondent.

6. Mr. Sriram Panchu, learned Senior Counsel appeared for the petitioner. Mr. V. Perumal, learned counsel appeared for the 1st respondent, Mrs. P. Bagyalakshmi, learned counsel appeared for the 2nd respondent, and Mr. A. L. Somayaji, learned Senior Counsel appeared for the 3rd respondent.

7. Mr. Sriram Panchu, learned Senior Counsel for the petitioner has reiterated the stand of the petitioner that the old Madras Club being a heritage structure, the 3rd respondent cannot be permitted to demolish the same, while the stand taken by the learned counsel appearing for the respondents is that there is no law enacted by the State Legislature empowering the government or any authority to declare any property as heritage property, that merely because there is an attempt to legislate, as suggested by a Committee or Authority, that itself cannot partake the character of law, and that as there is no law restricting the right of the 3rd respondent to deal with her property, as she deems fit and proper, the relief claimed by the petitioner cannot be acceded to.

8. In the light of the arguments placed on either side, the constitutional provision that assumes significance is Article 300-A, which reads "no person shall be deprived of his property save by authority of law". This was hitherto a fundamental right under Article 31, and was bodily lifted and inserted as a constitutional, guarantee under Article 300-A by Constitution (44th Amendment) Act, 1978, which came into force from 20th June, 1979. The attempt of the petitioner is to use the medium of this Court to direct the statutory authorities i.e., respondents 1 and 2 to do something, which has got no sanction of law. The plea to restrict the 3rd respondent from exercising her rights over her property is a deprivation of her rights over the property and falls within the ambit of Article 300-A of the Indian Constitution, and that is what the respondents 1 and 2 are crying hoarse, since there is no enactment by which the above property of the 3rd respondent can be declared as heritage property, they cannot prevent the 3rd respondent from either demolishing the existing old structures or making new constructions in their places. This stand of the respondents 1 and 2 are quite reasonable, and in fact perfectly in consonance with Article 300-A of the Indian Constitution.

9. In State of Madhya Pradesh and Anr. v. Thakur Bharat Singh, AIR 1967 SC 1170, a Constitution Bench of the Supreme Court has held that a person's right cannot be infringed unless there is an Act of Legislature and even the power under Article 162 cannot be invoked.

10. In Bishamber Dayal Chandra Mohan etc., v. State of U.P. and Ors. etc., MANU/SC/0056/1981 : [1982]1SCR1137 , the Supreme Court held that the State Government cannot while taking recourse to the executive power of the State under Article 162 of the Constitution of India, deprive a person of his property, that such power can be exercised only by authority of law and not by mere executive fiat or order, and that Article 162 is always subject to Article 300-A.

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11. To the same effect is the proposition laid down by the Supreme Court in Jilubhai Nanbhai Khachar etc., v. State of Gujarat and Anr., MANU/SC/0033/1995 : AIR1995SC142 .

12. In view of the above law laid down by the Supreme Court of India, the stand of the respondents 1 to 3 are well reasoned, and consequently, the relief sought for by the petitioner cannot be granted. The writ petition is dismissed accordingly. It is needless to mention that the interim orders passed during the pendency of the writ petition stand vacated. No costs. Consequently, connected W.P.M.P. is also dismissed.

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