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# **THE INDIAN JUDICIARY ON THE PROTECTION** **OF THE ANCIENT MONUMENTS**

Authored By-Smita S.Angadi<sup>1</sup>

## **Abstract**

Heritage Sites are a symbol of history. Preservation of Heritage is an inevitable responsibility of state as well as of the Citizens. The Judiciary has also played a vital role in protection of cultural heritage. Stringent punishment is awarded to the offenders. The recovered antiquities are protected by placing them in state established Museums. The judiciary has also ordered to permit the use of antiquities for research purposes. Sometimes, there is misuse of the permission granted to the researchers. The Archeological survey of India has a vital role in excavating, protecting, preserving the cultural heritage. Its contributions towards helping the Judiciary to render judgments properly is also highly appreciable.

The Cultural Heritage has to be preserved and protected as even the Future generation has the right over them. In order to follow the Intergenerational Equity principle, the State, Judiciary, NGOs and the Civil society at large play an important role in protection of the Cultural heritage.

This Paper deals with the 5 important Judgements related to Ancient Monuments decided by the Supreme Court and High Courts.

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## Introduction

Heritage Sites are a symbol of history. Preservation of Heritage is an inevitable responsibility of state as well as of the Citizens. To value and preserve the rich heritage of our composite culture is the Fundamental duty imposed on citizens under Art. 51 A (f) of Indian Constitution. Article 49 of Directive Principles of State Policy deals with protection of Monuments, Places and Objects of National importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be. It is an obligation of state to protect them by declaring or under law made by Parliament under Entry 67 of List I in VII schedule. Accordingly, Parliament has enacted many such laws for the protection of cultural heritage and ancient monuments. The important enactments promulgated to protect and preserve Ancient Monuments, Archeological Sites, Antiquities and Art Treasure are 1) The Indian Treasure Trove Act, 1878, 2) The Antiquities (Export Control) Act, 1947 3) The Ancient Monuments Preservation Act, 1904, (Repealed) 4) The Ancient Monuments and Archeological Sites and Remains Act, 1958, 5) The Antiquities and Art Treasures Act, 1972, 6) The Ancient Monuments and Archeological Sites and Remains Amendment Act, 2010, 7) The Antiquities and Art Treasures Bill, 2017.

The Judiciary has also played a vital role in protection of cultural heritage. Stringent punishment is awarded to the offenders. The recovered antiquities are protected by placing them in state established Museums. The judiciary has also ordered to permit the use of antiquities for research purposes. Sometimes, there is misuse of the permission granted to the researchers The Archeological survey of India has a vital role in excavating, protecting, preserving the cultural heritage. Its contributions towards helping the Judiciary to render judgments properly is also highly appreciable.

The Cultural Heritage has to be preserved and protected as even the Future generation has the right over them. In order to follow the Intergenerational Equity principle, the State, Judiciary, NGOs and the Civil society at large play an important role in protection of the Cultural heritage. This Papers deals with the 5 important Judgements related to Ancient Monuments decided by the Supreme Court and High Courts.

1. **P.S. RAGHAVAN V. STATE OF KERALA HIGH COURT**<sup>2</sup>

JUDGE: B. Kemal Pasha, J.

In this case, Petitioners are members of the Temple Protection Committee of Irunilamkode Mahadeva Temple. It was alleged that they have violated the Provisions of the Cochin Ancient Monuments Preservation Act (Act IX of 1110 M.E) and modified the Temple, which was declared as Ancient Monument by the Government of Kerala. It was also alleged that tiles were paved on the portions of the Temple and the artistic works on stones of the Temple were destroyed. According to the petitioners, in the Final Report, the offence under Section 30 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, has been incorporated. The learned counsel for the petitioners had pointed out that no notification within the meaning of Section 3 and 4 of the Central Act is there in respect of the Temple in question. Matters being so, the offence under Section 30 of the said Act is not legally sustainable as against the petitioners. In the result, this Crl.M.C was allowed in part and the offence under Section 30<sup>3</sup> of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, in Annexure-3 Final Report was quashed. It is a matter of evidence as to whether the other offence under IPC Section 427<sup>4</sup> will lie? Of course, it was made clear that the petitioners cannot be roped in with the aid of IPC Section 149<sup>5</sup>, when there is no allegation that there was any unlawful assembly.

2. **K.H. ABDUL GAFOOR V. PATTAMBI GRAMA PANCHAYATH**<sup>6</sup>

Judge: P.N Ravindran, J.

The Petitioner was the owner of a parcel of land situated within the local limits of Pattambi Grama Panchayat. With a view to put up a building therein, he applied to the Secretary of

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<sup>2</sup> 2018 SCC ONLINE KER 86

<sup>3</sup> WHOEVER, destroys, removes, inquires, alters, defaces, imperils, or misuse a protected monument, or being the owner or occupier of a protected monument, contravenes an order made under subsection (1) of section 9 or under sub-section (1) of section 10, or removes from a protected monument any sculpture, carving, image, bas-relief, inscription, or other like object, or does any act in contravention of sub-section(1) of section 19, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

<sup>4</sup> Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

<sup>5</sup> If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

<sup>6</sup> 2010 SCC ONLINE KER 3967

Pattambi Grama Panchayat for a building permit and building permit was granted on 9.12.2009. When the petitioner commenced the construction of the building, the second respondent issued notice informing the petitioner that in view of the provisions contained in the Ancient Monuments and Archaeological Sites and Remains Act, the petitioner cannot put up a building as the site of the building is within the regulated area, i.e., within a distance of 200 meters from an Ancient Monument, viz., the Kaithali Mahadeva Temple was under challenge in this writ petition.

Respondent had filed a counter affidavit contending that the site where the Petitioner had proposed to put up a building is within a distance of 200 meters from an Ancient temple and therefore, under the provisions of Section 20A of the Ancient Monuments and Archaeological Sites and Remains Act, as amended, the petitioner cannot put up a building in that site without first obtaining the permission of the Competent Authority. The competent authority at that point of time was not notified by the Central Government. However, after the counter affidavit was filed, the Government of India had issued a notification dated 29.10.2010 designating the Director of Archaeology, Government of Kerala, Trivandrum as the competent authority for the purpose of Section 20C and 20D of the Ancient Monuments and Archaeological Sites and Remains Act. The Petitioner in view of the said developments, submitted the original representation of the building before the said officer requesting for permission to proceed with and complete the construction. When the writ petition came up for hearing, the learned counsel appeared for the petitioner submitted that without going into the rival contentions, the writ petition had to be disposed of with a direction to the additional fourth respondent to consider the representation of the building and take an appropriate decision thereon, within a time limit to be fixed by this Court.

In such circumstances, as the petitioner had chosen to move the competent authority by filing representation, the Writ Petition was disposed of with a direction to the Director of Archaeology, Government of Kerala, Trivandrum, to consider the representation submitted by the petitioner and take an appropriate decision thereon, after affording the petitioner and respondents 1 to 3 herein an opportunity of being heard. The additional fourth respondent shall pass final orders in the matter expeditiously and in any event within one month from the date on which the petitioner produces a certified copy of this judgment before him.

### 3. *SRILAXMI REDDY v. STATE OF KARNATAKA*<sup>7</sup>

JUDGES Subhro Kamal Mukherjee, C.J Budihal R.B, J.

A notice was issued to the writ petitioner restraining him from carrying on the quarrying operations in the said area, on the ground that he could not indulge in quarrying operations within the prohibited area. It is settled position that while computing the area, the outer limits of the monument are to be taken into consideration and there cannot be any quarrying operations within the area of one hundred metres from the outer boundary of the protected monument. The quarrying operation of the writ petitioner is beyond 1.3 km from Sannarachamma Gudda, which is an ancient monument. A notice was issued to the writ petitioner restraining him from carrying on the quarrying operations in the said area, on the ground that he could not indulge in quarrying operations within the prohibited area.

Section 20A of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 for short, the Central Act provides that a protected area or a protected monument, as the case may be, is an area of one hundred metres in all directions in respect of the protected area or protected monument. Mr. R.G Kalle, learned advocate for the writ petitioner, submitted that there cannot be any prohibition of any quarrying operations beyond one hundred metres from the protected monument. It was settled position that while computing the area, the outer limits of the monument are to be taken into consideration and, therefore, there cannot be any quarrying operations within the area of one hundred metres from the outer boundary of the protected monument.

Mr. I. Tharanath Poojary, learned additional government advocate, appeared for the respondents, argued that the respondents were within their rights under the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 for short, the Karnataka Act read with sub-rule (3) of Rule 8 of the Karnataka Minor Mineral Concession Rules, 1994 for short, the Rules, which prohibits quarrying operations carried on by the writ petitioner. Section 4 of the Karnataka Act empowers the government to declare an ancient monument as a protected monument. Section 20 of the Karnataka Act provides for imposition of restrictions from utilizing such areas or any part thereof, without the permission of the Government. Sub-rule (3) of Rule 8 of the Rules provides that no quarrying lease shall be granted in respect of any land notified by the State Government as reserved for use by the State or Central Government, any body or

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<sup>7</sup> 2016 SCC ONLINE KAR 6721

corporation owned or controlled by the State or Central Government or for any other public or special purposes.

When there is a Central Act in the field prohibiting quarrying operations within an area of one hundred metres from the boundary of a protected monument, and as there is no provision in the Karnataka Act or the Rules, indicating the extent of prohibited area, there cannot be any order restricting a miner from operating his/her mining operations beyond one hundred metres from the outer limit of the protected ancient monument. Therefore, the order impugned was set aside. The Bench directed the writ petitioner-miner not to carry on his quarrying operations causing any damage to the protected ancient monument, including blasting in such area causing damage to the protected ancient monument. With the aforesaid directions, the writ petition is allowed. There will be no order as to costs.

#### **4. SHAIKH SHAHID v. STATE OF M.P.**<sup>8</sup>

JUDGE: A.M Khanwilkar, C.J Sanjay Yadav, J.

This petition essentially takes exception to the decision of the Commissioner dated 21.4.2014. The Commissioner had allowed the appeal preferred by the Respondent No. 18 and, in turn, has set aside the orders passed by the subordinate Authorities refusing permission to Respondent No. 18 on the ground that allowing Respondent No. 18 to put up any structure would violate the provisions of law. The Commissioner, no doubt, had relied on the Najri Naksha and has found that the distance between the two spots is around 233.35 meters and then proceeded to decide the matter keeping in mind the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and Rules framed thereunder. However, the grievance of the petitioner was that, the issue ought to be answered on the basis of provisions of Madhya Pradesh Ancient Monuments and Archaeological Sites and Remains Rules, 1976, which have been framed under the provisions of Madhya Pradesh Ancient Monuments and Archaeological Sites and Remains Act, 1964. The Commissioner had not considered those provisions though applicable to the case on hand, which prohibits any construction in the areas upto 100 meters and further beyond it upto 200 meters from the protected limits near or adjoining to any protected monument of the State for the purposes of mining and construction. The argument of Respondent No. 18, however, is that the prohibition of construction is only within 100 meters from the protected monument of the

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<sup>8</sup> 2014 SCC ONLINE MP 5253 .

State and the activity proposed to be carried out by the said respondent was permissible in the regulated area. As aforesaid, the Commissioner has not examined these aspects of the matter at all. The issues raised in the present petition are both about the correct location and distance of the land from the protected monument of the State as also about the applicability of provisions of the State Act of 1964 and the Rules of 1976 framed thereunder. Therefore, the Commissioner is obliged to keep in mind all the relevant records that may be relied upon by the parties or to be produced by the Revenue Authorities. After determining the factual position about the actual distance from the monument, the Commissioner may then examine the legal question about the applicability of the State enactment and the prohibition specified as per those Rules and then opine whether the said prohibition is attracted in the fact situation of the present case. All these aspects will have to be considered by the Commissioner in the first place, which, as aforesaid, has been glossed over in the impugned decision. Accordingly, the impugned decision is quashed and set aside and instead the parties are relegated before the Commissioner for re-examination of the appeal on its own merits, in accordance with law. As the proposal submitted by the Respondent No. 18 relates back to 13.12.2012. The Bench directed the Commissioner to decide the said appeal proceedings expeditiously and preferably not later than six weeks from the date of receipt of copy of this order. The Bench once again reiterate that all questions of fact and law will have to be considered by the Commissioner on its own merits afresh in accordance with law. The petition is disposed of accordingly.

5. **SRI Y V SATYANARAYANA v. THE DEPUTY COMMISSIONER**<sup>9</sup>

JUDGE: G.NARENDAR

The learned AGA submits that under the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act 1961, the Deputy Commissioner is the competent Authority to initiate action for removal of the any building for enforcing restrictions and for protection of the core area. Hence, it is submitted that the Authority be permitted to withdraw the present notification with liberty to initiate proceedings in accordance with law after notice to the petitioner. The said submission of learned AGA is placed on record. In the light of submissions placed on record, the 3rd respondent is permitted to withdraw the notice as per Annexure-E to the writ petition. However, withdrawal of notification / communication by the 3rd respondent would

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<sup>9</sup> WP 22180/2017

not restrain the competent Authority from initiating appropriate proceedings, in accordance with the provisions of law under the Act, if they find that the act of the petitioner or any other similarly situated persons is violating of the provisions of the Act. It is made clear that while initiating such proceedings i.e., issuing of show cause notice or initiating action against the erring persons, shall be made after affording a hearing to them. With the above observations the writ petition stands dismissed.

To conclude, The Supreme Court and various High Courts of the Country have significantly contributed to the Preservation, Conservation and Protection of the Cultural Heritage of the Country.

