

Rajasthan High Court

Hari Shankar And Anr. vs Union Of India (Uoi) And Ors. on 9 August, 1999

Equivalent citations: AIR 2000 Raj 26, 2000 (1) WLC 351

Bench: V Kokje, S Mital

JUDGMENT

1. Heard Shri Vikram Purohit for the appellants and Shri Vineet Kumar Mathur, learned counsel for the Union of India.
2. The case was fixed on stay petition but since the notice was issued for final disposal of the appeal, we are deciding it finally.
3. By the impugned order the learned single Judge dismissed the petition holding it to be involving disputed questions of fact, which could not be decided under Article 226 of the Constitution of India. Having heard the counsel, we are of the opinion that no disputed questions of fact are involved in the case as the disputed site is admittedly situated within the walls of Jaisalmer Fort. The dispute is as to whether Jaisalmer Fort area is a protected area as defined by the Ancient Monuments and Areheological Sites and Remains Act, 1958 (hereinafter called '1958 Act') which is purely a question of law.
4. The petitioners/appellants complain that the respondents are trying to remove construction put up by them in an area which does not fall within the definition of 'protected area' under the '1958 Act'. According to the appellants an area to be declared as 'protected area' has to be an archaeological site and remains declared to be of national importance by or under the 1958 Act. According to the appellants/ petitioners there is no such declaration made and therefore, the respondents have no authority to demolish the construction in exercise of powers under Section 19(2) of the Act.
5. The learned counsel for the Union of India on the other hand has filed a copy of The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951. It is contended by him that declaration of an archaeological site or remains to be of national importance under the 1951 Act would be sufficient for the purpose of the 1958 Act and no new declaration was necessary.
6. Section 19(2) of the Act under which the action is being taken by the respondents provides that the Central Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of Sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal. It is, therefore, to be seen whether the appellants' building is situated within the protected area.
7. Protected area has been defined by Section 2(i) of the Act to mean to be a archaeological site and remains which is declared to be of national importance by or under the Act. Section 2(d) defines the term "archaeological site and remains" to mean any area which contains or is reasonably believed to contain ruins or relics of historical or archaeological importance which have been in existence for not less than one hundred years and includes such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and the means of access to and convenient inspection of the area. As it is an admitted fact that the appellants' construction is within the walls of the Jaisalmer Fort, there is no doubt that it comes within the protected area as defined by Section 2(i) read with Section 2(d) of the Act.
8. It is now to be seen whether the aforesaid protected area has been declared to be of national importance by or under the Act. Section 3 of the Act provides that all ancient and historical monuments and all archaeological sites and remains referred to in Part I and Part II of the Schedule appended to that Act are declared to be ancient and historical monuments and archaeological sites and remains of national importance. In Part II of the Schedule at Serial No. 59 in the State of Rajasthan, Jaisalmer Fort including ancient temples

has been declared to be ancient and historical monuments and archaeological sites and remains of national importance. Thus, the combined effect of Clauses (d) & (i) of Section 2 and Section 3 of the Act is that Jaisalmer Fort with its entire precincts is a protected area being an archaeological site and remains of national importance for the purposes of the Act and, therefore, the respondents are within their right to proceed against any building constructed by any person within that area in contravention of the provisions of Sub-section (1) of Section 19 of the Act. For the aforesaid reason, we find that though the learned single Judge committed an error in dismissing the petition before him on the ground that it involved disputed questions of fact on merits, there is no force in the petition from which this appeal arises. The appeal, therefore, has no force, it is dismissed.