

GAHC010012082016



2026:GAU-AS:2742

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2024/2016

NIRANJAN HAZARIKA
S/O LT. RATNESWAR HAZARIKA, R/O VILL. and P.O. GAURISAGAR, DIST-
SIBASAGAR, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, DEPTT. OF CULTURAL
AFFAIRS, SHASTRI BHAWAN, NEW DELHI-1

2:THE DIRECTOR GENERAL
ARCHAEOLOGICAL SURVEY OF INDIA
JANAPATH
NEW DELHI-01

3:THE REGIONAL DIRECTOR ER
ARCHAEOLOGICAL SURVEY OF INDIA
1
BBD BAGH CURRENCY BUILDING
KOLKATA-1

4:THE SUPERINTENDENT
ARCHAEOLOGICAL SURVEY OF INDIA
GUWAHATI CIRCLE
GOPINATH BORDOLOI ROAD
AMBARI
GHY-1

5:THE DY. COMMISSIONER
SIBASAGAR
P.O. SIBASAGAR
PIN-785640

ASSA

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the petitioner(s): Mr. SS Bora

Advocate for the respondent(s): Mr. RKD Choudhury, Dy. SGI

Date on which Judgment is reserved : NA

Date of Pronouncement of Judgment : **23.02.2026**

Whether the Pronouncement is of the : NA

Operative Part of the Judgment

Whether the Full Judgment has been : Yes
Pronounced

JUDGMENT & ORDER (ORAL)

Heard Mr. SS Bora, the learned counsel appearing on behalf of the petitioner. I have also heard Mr. RKD Choudhury, the learned Dy.SGI, who appears on behalf of the respondent Nos. 1, 2 and 4. Mr. J. Handique, the learned counsel, who appears on behalf of the respondent No.5. None appears on behalf of the respondent No.3 on call.

2. The petitioner herein has approached this Court challenging the notice dated 10.11.2015 whereby the respondent No. 4 had issued a notice directing

the petitioner to remove the unauthorized building/construction within 7(seven) days of the receipt of the notice, failing which the Central Government shall exercise its powers under Sub Rule (2) of Rule 38 of the *Ancient Monuments and Archaeological Sites and Remains Rules, 1959*, (for short, 'the Act of 1959') and cause the unauthorized building/construction removed at the costs and expenses of the petitioner through the District Administration.

3. The petitioner had stated in his writ petition that the petitioner is a businessman having ancestral property which stood in the name of his father, late Ratneswar Hazarika, since 1952. The petitioner had further stated at paragraph No.2 of the writ petition that his ancestral RCC House is situated over a plot of land ad measuring 3 kathas, 16 leches, under dag No.288 in Phukan Phodia Village, Gaurisagar, under Mouza Morabazar, under Sivasagar district. It is averred that the house was constructed by his father way back in the year 1980-81, and it was repaired/renovated during the year 1986-87 by the petitioner after mutating a portion of the said plot of land in his name.

4. It is also stated that the petitioner is presently living in the said house without changing the original structure of the house. The allegation of the petitioner herein is that the house standing over the land is not situated within 100 meters from Devidol, Gaurisagar and as such, the provisions of the *Ancient Monuments and Archaeological Sites and Remains Act, 1958* (for short, 'the Act of 1958') is not applicable.

5. It is also the case of the petitioner that even assuming, for argument's sake that the building in question is standing over the land is within the distance of

100 meters of Devidol Gaurisagar, but the said building was constructed in the year 1980-81 by his father and repaired/renovated in the year 1986-87 by the petitioner and, as such, it would not come within the mischief of Sections 20 A & 20 C of the Act of 1958. It is the further case of the petitioner that after issuance of notice by the respondent No.4 on 27.04.2011 to the petitioner and the petitioner submitting a reply, the impugned notice was issued on 10.11.2015 directing the petitioner to remove the unauthorized construction.

6. It is further seen from the materials on record that the petitioner had only enclosed the copy of the *jamabandi* as well as the various revenue paying receipts. However, no documents have been placed on record to show as to when the petitioner's father had constructed the building in question and whether the petitioner thereupon had renovated in the year 1986-87 itself.

7. On the other hand, it is alleged in the impugned notice dated 10.11.2015 that the petitioner constructed the building without complying with the previous show cause notice served, vide the Office letter dated 27.04.2011 and its demolition notice dated 05.08.2011.

8. The records reveal that by an order dated 28.03.2016, this Court while issuing notice, had passed an interim order that the status-quo in respect to the family residence should be maintained by all parties. The interim order, thereupon, has been extended from time to time.

9. The record further reveals that on 20.07.2024, an affidavit-in-opposition was filed on behalf of the respondent Nos. 1 to 4. In the affidavit, it is mentioned that the construction so carried out by the petitioner is just at a distance of 34 meters from the boundary of the protected monument. It was mentioned that the prohibited area starts from the boundary of the protected monument, which is called the '*protected limit*', and runs to the distance of 100 meters.

10. To the said affidavit-in-opposition, certain photographs have been enclosed to show the vicinity of the petitioner's building to that of the protected site i.e. Devidol at Gaurisagar. A certificate issued by the Circle Officer, Amguri Revenue Circle was also enclosed, wherein it was certified that the distance between Devidol at Gaurisagar and the boundary wall of the petitioner is about 20 meters according to the report submitted by the Lat Mandal and S.K. It was also mentioned that the petitioner was given all necessary opportunities as is provided under the Act of 1958 and the Rules framed therein under.

11. To the said affidavit-in-opposition which was filed on 20.07.2024, the petitioner has not filed any reply.

12. This Court has duly heard the learned counsels appearing on behalf of the parties and has also perused the materials on record.

13. For the purpose of the instant case, this Court finds it relevant to take note of two provisions of the Act of 1958 i.e. Section 20A and 20C, both are reproduced hereinunder:

"20A. Declaration of prohibited area and carrying out public work or other works in prohibited area.—Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument:

Provided that the Central Government may, on the recommendation of the Authority, by notification in the Official Gazette, specify an area more than one hundred metres to be the prohibited area having regard to the classification of any protected monument or protected area, as the case may

be, under section 4A.

(2) Save as otherwise provided in section 20C, no person, other than an archaeological officer, shall carry out any construction in any prohibited area.

(3) In a case where the Central Government or the Director-General, as the case may be, is satisfied that—

(a) it is necessary or expedient for carrying out such public work or any project essential to the public; or

(b) such other work or project, in its opinion, shall not have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding, it or he may, notwithstanding anything contained in sub-section (2), in exceptional cases and having regard to the public interest, by order and for reasons to be recorded in writing, permit, such public work or project

essential to the public or other constructions, to be carried out in a prohibited area:

Provided that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a prohibited area in respect of such protected monument, shall be deemed to be the prohibited area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted by the Central Government or the Director-General, as the case may be, for the construction within the prohibited area on the basis of the recommendation of the Expert Advisory Committee, shall be deemed to have been validly granted in accordance with the provisions of this Act, as if this section had been in force at all material times:

Provided further that nothing contained in the first proviso shall apply to any permission granted, subsequent to the completion of construction or re-construction of any building or structure in any prohibited area in pursuance of the notification of the Government of India in the Department of Culture (Archaeological Survey of India) number S.O. 1764, dated the 16th June, 1992 issued under Rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, or, without having obtained the recommendations of the Committee constituted in pursuance of the order of the Government of India number 24/22/2006-M, dated the 20th July, 2006 (subsequently

referred to as the Expert Advisory Committee in orders dated the 27th August, 2008 and the 5th May, 2009).]

[(4) No permission, referred to in sub-section (3), including carrying out any public work or project essential to the public or other constructions, shall be granted in any prohibited area on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the assent of the President.]”

“[20C. Application for repair or renovation in prohibited area, or construction or re-construction or repair or renovation in regulated area.—(1) Any person, who owns any building or structure, which existed in a prohibited area before the 16th day of June, 1992, or, which had been subsequently constructed with the approval of the Director-General and desires to carry out any repair or renovation of such building or structure, may make an application to the competent authority for carrying out such repair or renovation, as the case may be.

(2) Any person, who owns or possesses any building or structure or land in any regulated area, and desires to carry out any construction or re-construction or repair or renovation of such building or structure on such land, as the case may be, may make an application to the competent authority for carrying out construction or re-construction or repair or renovation, as the case may be.”

14. From a perusal of the above-quoted Section 20A, it is seen that every area beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of 100 meters in all directions shall be

prohibited area in respect of a protected area or protected monument. The Central Government, however, in terms with the proviso to Section 20A, has the power to extend the distance from 100 meters to a distance more than 100 meters, having regard to the classification of any protected monument or protected area.

15. Sub-section (2) of Section 20A of the Act of 1958 further stipulates that save as otherwise provided in Section 20C, no person, other than an Archaeological Officer, shall carry out any construction in any prohibited area.

16. Let this Court now take note of Section 20 C, which relates to applications for repair or renovation in prohibited area, or construction or re-construction or repair or renovation in regulated area. A perusal of Section 20C (1) of the Act of 1958 confers a right upon any person, who owns any building or structure, which existed in a prohibited area before the 16.06.1992, or, which had been subsequently constructed with the approval of the Director-General and desires to carry out any repair or renovation of such building or structure, to make an application to the Competent Authority for carrying out any repair or renovation, as the case may be.

17. Sub-Section (2) of Section 20 C of the Act of 1958 is in respect of any person, who owns or possesses any building or structure or land in any Regulated area. For the purpose of understanding, what is a *Regulated Area*, it would be necessary to take note of Section 20 B of the Act of 1958. Section 20 B (1) of the Act of 1958 stipulates that every area beginning at the limit of the prohibited area in respect of every ancient monument and archaeological site

and remains, and extending to a distance of 200 meters in all directions, shall be a regulated area in respect of every ancient monument and archaeological site and remains.

18. In the backdrop of the above, if this Court now takes note of sub-section (2) of Section 20 C of the Act of 1958, it would be seen that any person who owns or possesses any building or structure or land in any regulated area and who desires to carry out any construction or reconstruction or repair or renovation of such building or structure on the said land can make an application to the competent authority for carrying out construction or reconstruction or repair or renovation, as the case may be.

19. Therefore, from a conjoint reading of Section 20C of the Act of 1958, it would show that there is a fundamental difference as regards the rights of a person who has a building in a prohibited area or a regulated area, *inasmuch as* in a prohibited area, the only permissible right is subject to permission to carry out repair or renovation, whereas in the case of a regulated area, it shall include a right to seek permission for construction or reconstruction or repair or renovation of such building or structure on such land.

20. It is also very apposite herein to take note of that Section 20A, 20B, and 20C though were inserted vide the *Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010*, but were given retrospective effect from 16.06.1992. As it is the specific case of the respondents, as would be seen not only from the affidavit-in-opposition, but also from the impugned notice that the construction was carried out within the

prohibited area and there is no material shown by the petitioner to reject such claim made by the respondents in the impugned order as well as in the affidavit-in-opposition, it has to be construed that the petitioner's building is within the prohibited area.

21. *Be that as it may*, it is of importance as stated-above that Section 20A, 20B, and 20C were given effect from 16.06.1992, and the petitioner herein claims that the last repairs were carried out in the year 1986-87. This is an aspect which the Competent Authority being in association with the District Administration can ascertain.

22. Further to that, in absence of any materials being placed by the petitioner as regards the construction/repairs so carried out in the year 1986-87 and his father constructed the building in the year 1980-81, it should be best left to the Competent Authority to decide on this factual aspect, thereby giving an opportunity to the petitioner to submit necessary materials within a reasonable period as regards the construction carried out by his father and repairs carried out by him, as alleged in the writ petition.

23. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i). This Court directs the respondent Nos.1 to 4 not to give effect to the impugned notice dated 10.11.2015 till an adjudication is carried out as to whether the petitioner building was constructed prior to 16.06.1992 or thereafter.

(ii). This Court grants liberty to the petitioner to submit within a period of 20 days from today before the respondent No.4 all such materials on the basis of which the petitioner contends that his father had constructed the building in question in the year 1980-81 and he had repaired the same in the year 1986-87 and there was no further repairs or renovation carried thereafter.

(iii). It is further observed and directed that in the circumstance the petitioner submits such evidence, the Competent Authority of the respondents shall duly consider the same and then take a decision as to whether the construction so carried out is in violation to Section 20A of the Act of 1958, and without taking the permission in terms with Section 20 C of the Act of 1958. The decision be taken by passing a Speaking Order.

(iv). Depending upon such decision the Competent Authority shall do the needful in respect to the impugned notice dated 10.11.2015.

(v). It is further observed that if the Speaking Order as directed to be passed is not in favour of the petitioner, no resort be taken for demolition for a period of 15 days from the date of intimation of the Speaking Order to the petitioner so that the petitioner can take recourse to the permissible course of Redressal against the Speaking Order.

JUDGE

Shivani Gautam Digitally signed by Shivani Gautam
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Comparing Assistant