

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

WRIT PETITION NO.10451 OF 2018 (GM-RES)

BETWEEN:

SRI. B.R. RAMAKRISHNA
S/O LATE B. RANGAPPA
AGED ABOUT 66 YEARS
RESIDING AT "MITHILA"
JAIN TEMPLE STREET
MADHUGIRI TOWN
MADHUGIRI TALUK
TUMKUR DISTRICT-572 132

...PETITIONER

(BY SRI. DHANANJAY JOSHI, SENIOR COUNSEL A/W
SRI. KASHYAP N. NAIK, ADVOCATE)

AND:

1. UNION OF INDIA
REPRESENTED BY THE UNDER SECRETARY
MINISTRY OF CULTURE
"C" WING, SHASTRI BHAWAN
NEW DELHI-110 001
2. NATIONAL MONUMENTS AUTHORITY
#24, TILAK MARG
NEW DELHI-110 001
REPRESENTED BY ITS
CHAIRPERSON
3. ARCHAEOLOGICAL SURVEY OF INDIA
REPRESENTED BY THE
REGIONAL DIRECTOR (SOUTH) &
COMPETENT AUTHORITY (KARNATAKA)

KSIMC BUILDING
INDUSTRIAL ESTATE
RAJAJINAGAR
BANGALORE-560 010

4. STATE OF KARNATAKA
REPRESENTED BY THE COMMISSIONER
DEPARTMENT OF ARCHAEOLOGY
MUSEUMS AND HERITAGE
KARNATAKA EXHIBITION COMPLEX
INDIRANAGAR
MYSORE-570 010

...RESPONDENTS

(BY SRI. ARVIND KAMATH, ASGI FOR R1 TO R3;
SRI. MAHANTESH SHETTAR, AGA FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTIONS 20(A), 20(B) AND 20(C) OF THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1958, AS AMENDED BY THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS (VALIDATION AND AMENDMENT) ACT, 2010, AS UNCONSTITUTIONAL, BEING VIOLATIVE OF THE CONSTITUTIONAL RIGHTS OF THE PETITIONER AND SUCH PERSONS THAT OWN OR OCCUPY VACANT LAND FALLING WITHIN THE 'PROHIBITED AREA' OF A PROTECTED MONUMENT AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 17.07.2026 FOR ORDER COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

CAV ORDER

1. Petitioner is before this Court seeking following reliefs:

" A. Issue a Writ of Mandamus declaring Sections 20(A), 20(B) and 20(C) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, as amended by the Ancient Monuments and Archaeological Sites and Remains (Validation and Amendment) Act, 2010, as unconstitutional, being violative of the constitutional rights of the petitioner and such persons that own or occupy vacant land falling within the 'prohibited area of a protected monument';

B. Consequently, issue a writ of Mandamus to the Respondents Nos.1 and 2 to permit the Petitioner to undertake construction on his Property subject to such reasonable conditions and restrictions as the Respondents may impose; AND

C. Issue appropriate Directions to the Respondents to fulfil their duties under the Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and other Functions of the Competent Authority Rules), 2011, and thereby to prepare detailed site plans in respect of the protected areas of centrally protected monuments as well as heritage bye-laws in respect of the protected areas of centrally protected monuments;

AND

D. Grant such other relief/s as this Hon'ble Court may deem fit in the facts and circumstances of this case, in the interest of justice and equity. "

2. Brief facts of the case are;

- 2.1 That the petitioner is the sole and absolute owner of a site bearing Assessment No.769/739/595 situated in Madhugiri Town, Tumkur District, Karnataka, being in possession and enjoyment of the same since 1990. That the total extent of the said site is 89 feet from East to West and 70+40/2 feet from North to South, out of which the petitioner has constructed a house in an area

of 39×50 feet on the Eastern side, leaving about 50×40 feet vacant on the Western side (subject site).

2.2 That the subject site is located at a distance of about 80-metres from the outermost wall of Madhugiri Fort, which has been notified as a protected monument under the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as "the Act, 1958"), by respondent No.3—Archaeological Survey of India. As such, the subject site owned by the petitioner falls within the protected area of Madhugiri Fort. The perimeter of the walls separates Madhugiri Fort from the town. There exist several residential and commercial complexes, government hospitals, and schools within the perimeter of the walls, well within the fort complex at the base of Madhugiri Hill. In recent times, a Government school has also been constructed, almost abutting the perimeter of the fort wall. The subject site is separated from the said Government school by a 40 feet wide municipal road.

2.3 That certain amendments have been made to the Act, 1958 by the Ancient Monuments and Archaeological Sites

and Remains (Amendment and Validation) Act, 2010 (hereinafter referred to as "the Amendment Act, 2010") with retrospective effect from 16.06.1992, which are arbitrary and unreasonable and fail the test of *intelligible differentia*. Consequently, an area of 100-metres in all directions from the centrally protected monument has been declared a 'prohibited area'. A further area of 200-metres in all directions from any protected monument has been declared a 'regulated area', with specific regulations on any construction, renovation, repair or reconstruction work to be undertaken within the 'prohibited' and 'regulated' areas surrounding a centrally protected monument.

- 2.4 However, the point or geographic location from which the protective 100-metres boundary begins is not defined. No construction is allowed within the prohibited area of a protected monument under the Amendment Act, 2010. However, the Competent Authority has been conferred the power to grant permission for the reconstruction or renovation of a building within the prohibited area of a protected monument.

2.5 That the petitioner, being desirous of constructing a residential building on the vacant portion of the subject site, had made an application on 16.10.2014 before respondent No.3 for grant of permission. That the respondent No.3, vide letter dated 24.11.2014, addressed to the Superintending Archaeologist, ASI, Bengaluru, had sought a report regarding the distance of the proposed construction from the monument. The Regional Director, South and Competent Authority, vide letter dated 29.04.2015, forwarded the petitioner's application along with certain documents, including an Inspection Report of the ASI, to the Member Secretary of the National Monument Authority, seeking an opinion with respect to the petitioner's application.

2.6 That the Member Secretary had issued a reply dated 11.08.2015, stating that the proposed construction falls at a distance of 59-metres from the protected monument and thereby requested respondent No.3, to take appropriate action as it deemed fit. Thereafter, respondent No.3, issued a letter dated 07.09.2015 to the petitioner stating that the National Monument Authority had refused to issue NOC to the petitioner and calling

upon him to submit his comments and clarification thereon.

2.7 That the petitioner issued a clarification vide letter dated 15.09.2015, contending *inter-alia*; that although the subject site lies within the protected area of the monument, it is substantially distant from and separated from the main fort and remnants of the fort by a 40-foot-wide road, a Government school, and other buildings.

2.8 That the petitioner also pointed out that the proposed construction would not have any impact on the monument. He also pointed out that the Government itself had put up construction adjacent to the fort wall, even after declaring Madhugiri Fort a centrally protected monument. Further, the petitioner requested respondent No.3 to reconsider the refusal of permission by granting no objection as sought for.

2.9 Without considering the aforesaid clarification given by the petitioner, respondent No.3 issued a letter dated 04.07.2016 in Form V of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 (for brevity "the Rules, 1959"), stating that the petitioner's

application had been refused, as no permission for construction/reconstruction could be granted within the prohibited area of any centrally protected monument. That the rejection of permission in respect of the subject site which exclusively belonged to the petitioner is unfair, arbitrary and in violation of the constitutional right to property as well as Article 14 of the Constitution of India.

2.10 Being aggrieved by the rejection of application for permission as sought above, the petitioner has filed the present petition seeking the aforesaid reliefs.

3. Statement of objections has been filed by respondent Nos.1 to 3, admitting the fact that Madhugiri Fort has been notified as a protected monument and that the site of the petitioner, being situated within 59-metres from the boundary of the monument, falls within the prohibited area. It is also admitted that the application filed by the petitioner seeking permission was rejected. It is denied that several constructions have come up within the prohibited area. As per the provisions of the Amendment Act, 2010, no permission can be granted by any authority for renovation, reconstruction or construction within the

prohibited area of any centrally protected monument, except for repairs subject to certain conditions. The intent of the Amendment Act, 2010, is to protect the monument, preserve and enhance the outstanding universal value of the heritage monument/site, and there is nothing unnatural or unconstitutional. Hence, the respondents sought rejection of the petition.

4. Respondent No.4 in his statement of objections, has contended that respondent No.4 has no jurisdiction over Madhugiri Fort, which is a nationally protected monument, and that, for all practical purposes, the matter comes under the Archaeological Survey of India and the National Monument Authority, Government of India, and respondent No.4 has no role in the matter.
5. Sri. Dhananjay Joshi, learned Senior Counsel along with Sri. Kashyap N. Naik, learned counsel for the petitioner submitted;
- 5.1 That the refusal to grant the permission to the petitioner to put up construction on the vacant portion of the subject site on the premise of same falling within the prohibited area of the centrally protected monument as

provided under the provisions of the Amendment Act, 2010, is arbitrary and unreasonable.

- 5.2. The said provisions directly contravene the rights of the petitioner guaranteed under Articles 14 and 21, as well as Article 31A of the Constitution of India, which mandates the State to provide compensation whenever it acquires or expropriates the property of a person, non-compliance of which falls foul of Article 14 of the Constitution of India.
- 5.3. That since the enactment does not provide for payment of compensation, it violates not only Article 300A but also Article 31A of the Constitution of India.
- 5.4. That the classification based on geographical differentia must be pertinent to the object of the legislation. Article 14 of the Constitution of India could be invoked when the legislation makes an arbitrary classification.
- 5.5. Fixation of prohibited and regulated areas at 100-metres and 200-metres, respectively, is without any scientific basis and cannot be termed as reasonable restriction.

- 5.6. The Amendment Act, 2010 fixes the limit based on the 1992 notification, which never specified permissible activities within the prohibited and regulated areas.
- 5.7. That even the report of the Select Committee on the Ancient Monuments and Archaeological Sites and Remains (Amendment) Bill, 2018, clarified that there was no scientific basis for deciding the 100-metres and 200-metres limits, even when the 1992 notification was passed.
- 5.8 That as per Section 20A(2) of the Act, 1958, no persons other than the Archaeological Officer shall carry out any construction within prohibited area, save as provided under Section 20C of the Act.
- 5.9 That the distinction between permission to be granted in a regulated area and permission not to be granted in any prohibited area does not meet the test of *intelligible differentia* and also cannot be held to be a reasonable classification, thereby violating Article 14 of the Constitution of India.

5.10 It is also not clear as to the object which is sought to be achieved by such classification of prohibited area and regulated area. There have been no studies or data available to fix such boundary or area to be prohibited or regulated area, inasmuch as the remains of an archaeological monument/site could well extend beyond such 100-metres and 200-metres limits, and it cannot be restricted that any excavation could take place only within 100-metres or 200-metres of the monument to discover the antiquities. As such, the classification and fixation of the boundary of 100-metres as prohibited area and 200-metres as regulated area are and cannot be termed reasonable.

5.11 Sections 20A and 20B of the Act, 1958 are vague and ambiguous, inasmuch as it is not specified from which point the said boundaries of 100-metres and 200-metres, respectively, could commence and be calculated. The radius as specified in the Act is vague and unidentifiable.

5.12 That in the instant case, Madhugiri Fort is located on the top of and around an enormous monolithic rock, the entrance of which is at a distance of 500 metres from the

property of the petitioner. Respondent Nos.1 and 2 have chosen the outermost peripheral wall as the point from which the 100-metres radius commences, which is not only unscientific but also unreasonable and arbitrary in the absence of an Act specifying the actual point from which the 100-metres prohibited area is to commence.

5.13 That there is discrimination in refusing permission to put up construction falling within the prohibited area and granting permission to put up construction in the area falling within the regulated area, and there is no logic in concluding that construction in the prohibited area would impact the monument and construction in the regulated area would not.

5.14 That Section 20A(2) of the Act, 1958 as amended in the Amendment Act, 2010, is unconstitutional, as it suffers from ambiguous classification without satisfying the test of *intelligible differentia*.

5.15 That the Amendment Act, 2010, was made retrospective from 16.06.1992. In other words, the person who had put up construction within the prohibited area before 1992 was entitled to retain and enjoy the structures and would

also be permitted to renovate the structures. Whereas, on and after 1992, the same is prohibited. Thus, the fixation of the said date of 1992 is arbitrary, illogical and violates Article 14 of the Constitution of India.

5.16 Though the object of the Act, 1958, and the Amendment Act, 2010, is to preserve the ancient monuments and archaeological sites from any damage or harm, the said object cannot be achieved by a total prohibition on construction in the specified prohibited area. The denial of the petitioner's request to undertake construction by respondent No.3 is without taking into consideration the fact that various Government buildings including Schools have come up and fall within the prohibited area as recently as 2013. The proposed construction on the vacant portion of subject site by the petitioner would not tangibly or adversely affect the monument.

5.17 That no physical survey has been conducted by respondents Nos.1 and 2 prior to the rejection of his application.

5.18 That the vacant portion of the subject site of the petitioner has thus virtually become useless, as the

petitioner can neither undertake any construction nor make use of the said vacant portion of subject site for any other purpose.

5.19 That by virtue of Section 27 of the Act, 1958, the petitioner is entitled to make an application seeking compensation in respect of diminution of profit or loss or damage. However, the portion of subject site being vacant, the petitioner cannot even claim diminution of profit or loss or damage to the property or land itself.

5.20 There is no provision under the Act, 1958, mandating the Government to acquire any property falling within the prohibited area of the protected monument and to compensate the landowner. Petitioner is also not entitled to any benefit under Section 27 of the Act, 1958.

5.21 He relies upon the judgment of the Apex Court in the case of ***KT Plantation Pvt. Ltd., and Anr. Vs. State of Karnataka***¹, referring to paragraphs Nos. 140 to 191, he submitted that there is a difference between expropriation and regulation. The respondent Authority,

¹ (2011) 9 SCC 1

without even acquiring the land, has, under the guise of regulating the land, deprived the petitioner of his entitlement. Therefore, he submits that a direction be issued to the respondents to permit the petitioner to undertake construction on his property, subject to reasonable conditions that may be imposed by the respondent authorities.

5.22 In support of the submissions, he relies upon the following judgments:

i) *Shri Ram Krishna Dalmia and Others Vs. Shri Justice S.R. Tendolkar and Others* reported in 1958 SCC Online SC6

(ii) *Jia Lal Vs. Delhi Administration* reported in 1962 SCC OnLine SC 423

(iii) *State of West Bengal Vs. Anwar Ali Sarkar*, reported in (1952) 1 SCC 1

(iv) *State of Tamil Nadu & Ors. v. Ananthi Ammal & Ors* reported in (1995) 1 SCC 519

(v) *Janabai Deorao Khatke v. Laxman Gunaji Wanole & Anr.*, reported in 1984 SCC OnLine Bom 119

(vi) *Archaeological Survey of India v. Narender Anand & Ors.*, reported in (2012) 2 SCC 562

(vii) *Denis Crasta v. Union of India Ministry of Culture Represented by Superintendent Archaeologist and Ors.*, reported in 2025 SCC OnLine Kar 1015

(viii) *Rehabilitation Ministry Employees Co-Operative House Building Society Ltd. v. Archaeological Survey of India & Anr.*, reported in 2011 SCC OnLine Del 3916

6. Sri. Arvind Kamath, learned Additional Solicitor General of India appearing for respondent Nos.1 to 3, on the other hand, justifying the constitutional validity of Section 20A, 20B and 20C of the Act, 1958, as inserted by the Amendment Act, 2010, submitted;

6.1 That the personal inconvenience of the petitioner in the nature of refusal of permission for new construction on a vacant plot falling within the prohibited area of a centrally protected monument cannot be termed and construed as a constitutional infirmity of a statute.

6.2 That there is always a strong presumption of constitutionality of any statute; the contrary has to be proved by the petitioner, who carries a heavy burden in that regard.

6.3 Where the statute is regulatory in nature, it is always for social and administrative needs, and the same cannot be struck down merely because, in the opinion of the Court, there could be a better scheme.

6.4 That the scheme of the Act, 1958, is to discharge the mandate of the State as contemplated under Article 49 of

the Constitution of India, which is indeed a regulatory measure.

6.5 That a statute can be invalidated only on the recognized grounds, namely, legislative incompetence, violation of fundamental rights or other constitutional provisions, or manifest arbitrariness of the legislation. None of these grounds have been pleaded by the petitioner in discharge of his burden. Such variant conclusory assertions of arbitrariness, unfairness and unreasonableness would not be sufficient.

6.6 The object of the Act, 1958 and the Amendment Act, 2010 is the preservation of ancient monuments and archaeological sites of national importance, which are being hemmed in from all sides by encroachment. The classification of the area as a 100-metres zone and an outer regulated zone is in furtherance of the said object, fully and completely meeting the test of *intelligible differentia*. The zone immediately abutting the monument to be a prohibited area is only to ensure that any construction closest to the monument should not pose any threat to the safety of the structure.

- 6.7 It is only with the expert impact assessment that the said zoning of the prohibited area and regulated area has been defined.
- 6.8 There cannot be any mathematical precision, which is also not a constitutional requirement. The classification of a 100-metres prohibited area and a 200-metres regulated area has been recognized by the Apex Court and also by the High Courts; there is no weakness in classifying the said zones.
- 6.9 Section 20A imposes prohibition in an area of 100-metres in all directions from the protected limits of the protected area or protected monument which is ascertainable.
- 6.10 Once the terms 'protected area' and 'protected monument' have been defined and notified, a regulatory boundary providing measurements from the notified protected limit is neither uncertain nor incapable of achieving the objects sought to be achieved. The dispute, if any, would be factual, and the same cannot be a ground to seek annulment of a statute. Recognition of property rights under Article 300A of the Constitution of India is not absolute or unlimited. It is qualified by

statutes, such as town planning, zoning, environmental and heritage regulations, and by general law.

6.11 That the Act of 1958 is only meant to regulate and not to deprive or extinguish the right, title and interest of the petitioner over the land in question.

6.12 Even according to the petitioner, he has put up construction of a house in the year 1991; there is no prohibition against renovating or reconstructing the existing structure in accordance with the statute. All that is prohibited is putting up a fresh construction.

6.13 That restriction of the manner of use in the public interest cannot be termed deprivation warranting compensation. That the restrictions imposed are thus reasonable and are also in furtherance of the constitutional mandate.

6.14 That the NMA experts have found that the proposed construction would lie 59-metres from the monument within the prohibited zone. Individual assertion cannot substitute for expert evaluation. The plea that the statute suffers from illogical retrospective application is also not tenable.

6.15 That the construction restrictions were introduced in the year 2010 is wrong and misconceived. Rule 59 was in operation from 15.10.1959, which empowered the Central Government to notify areas adjoining the protected monuments as prohibited and regulated.

6.16 That by Gazette notification dated 16.06.1992, the Director General uniformly demarcated 100-metres as prohibited and 200-metres as regulated for all protected monuments. It is therefore that the year 1992 has been given as a cut-off, which is neither arbitrary nor irrational.

6.17 That the Amendment Act, 2010, has merely crystallized and validated the pre-existing regime adopted on 16.06.1992.

6.18 That construction of the School, namely, Kote Primary School, is permissible in the public interest under Section 20A(3) of the Act, 1958; in any event, there was no fresh construction; it was only an addition to the existing building. Even if such constructions are carried out, that would only amount to executive irregularity and cannot give any right to the petitioner to add to further illegality; there cannot be equality to break the law.

6.19 Section 27 of the Act permits compensation only for the loss, damage, or diminution of the profit and cannot be used or applied in respect of a vacant plot, as there is no provision to acquire and compensate the land if rendered worthless. Since there is no acquisition, there is no question of granting compensation. As there is no extinguishment of title, regulation of the use of the land would not attract payment of compensation.

6.20 Worthlessness of a vacant plot for new construction cannot be equated to deprivation requiring compensation. The petitioner may have a remedy within the statutory scheme. Permission may be granted to the petitioner, based on an expert assessment, so that the existing structure may be renovated and reconstructed.

6.21 The draft bill of 2017, which is sought to be relied upon by the learned counsel for the petitioner, is of no consequence, as the said draft bill has not been enacted and is therefore unenforceable. There cannot be a mandamus to act contrary to the statute. Hence, he seeks dismissal of the petition.

6.22 He relies upon the following judgments in support of his submissions:

- (i). *Githa Hariharan v. RBI* reported in (1999) 2 SCC 228
- (ii). *Modern Dental College & Research Centre v. State of M.P.*, reported in (2016) 7 SCC 353
- (iii) *ASI Vs. Narender Anand* reported in (2012) 2 SCC 562
- (iv) *Denis Crasta v. Union of India*, [Karnataka High Court, W.P. No. 9010 of 2025]
- (v) *Assn. of Vasanth Apartments' Owners Vs. V. Gopinath* reported in (2024) 18 SCC 443
- (vi) *Noel Harper Vs. Union of India*, reported in (2023) 3 SCC 544
- (vii) *Natural Resources Allocation, In re (Special Reference No. 1 of 2012)* reported in (2012) 10 SCC 1
- (viii) *Independent Schools' Federation of India vs. Union of India*, reported in (2024) 14 SCC 667
- (ix) *K.T. Plantation (P) Ltd v. State of Karnataka*, reported in (2011) 9 SCC 1
- (x) *Ram Krishna Dalmia v. Justice S.R. Tendolkar* reported in AIR 1958 SC 538
- (xi) *Shayara Bano v. Union of India* reported in (2017) 9 SCC 1
- (xii) *Basawaraj v. Special LAO*, reported in (2013) 14 SCC 81

7. Heard and perused the records.

8. Admittedly, the petitioner has, in the year 1991, constructed a residential house in an area of 39x50 feet on the Eastern side of the subject site, leaving a vacant

portion of 50x40 feet on its Western side. The grievance of the petitioner is that he is not being permitted to put up construction on this vacant portion of the subject site.

9. Respondent No.3, upon the application filed by the petitioner for permission, had obtained a report from the Superintending Archaeologist, ASI, Kormangala, Bangalore, wherein it is stated that the subject site of the petitioner is situated at a distance of 59-metres from the protected monument, namely, Madhugiri Fort, which falls within the prohibited area as per the provisions of the Amendment Act, 2010.
10. Petitioner, being called upon, submitted his clarification dated 15.09.2015, as per Annexure-G, stating that his construction on the vacant portion of the subject site would not affect the protected monument, he had also mentioned the existence of a Government School and the construction/addition to the Government School around the monument and had requested a personal visit. However, by the impugned order dated 04.07.2016 at Annexure-J respondent No.3, declined to grant permission for construction as sought by the petitioner.

11. It is in the aforesaid background petitioner has questioned the constitutional validity of Sections 20A, 20B, and 20C of the Act, 1958, on the grounds noted above.

12. Points under the circumstances that arise for consideration are:

(i) Whether the petitioner has made out a case to declare Sections 20A, 20B, and 20C of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, as amended by the Ancient Monuments and Archaeological Sites and Remains Validation Amendment Act, 2010, as unconstitutional, being violative of the constitutional rights of the petitioner?

(ii) Whether a direction to the respondents can be issued to fulfil their duties under the Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-Laws and other Functions of the Competent Authority) Rules, 2011?

(iii) Whether the petitioner has made out a case for the issuance of a direction to permit the petitioner to undertake construction on vacant portion of the subject site?

13. **Regarding point No.1:**

Position of Law with regard to provisions of Sections 20A, 20B, and 20C of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, as amended by the Ancient Monuments and Archaeological Sites and Remains Validation (Amendment) Act, 2010.

13.1 The Apex Court in the case of **ASI vs. Narendra Anand** (supra) dealing with the very same provisions, in a case involving permission to put up construction on a plot

falling within the prohibited area of a protected monument, referring to scope and objects and various provisions of the Act, 1958 and the notification issued thereunder, at paragraphs 43 to 52 has held as under;

43. At this stage, it is apposite to mention that during the pendency of these appeals the 1958 Act was amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 and Sections 20-A and 20-B were inserted with effect from 16-6-1992 and Sections 20-C to 20-Q were inserted with effect from 29-3-2010.

44. Since the validity of the Amendment Act has not been questioned before us, we do not propose to examine the same. However, we would like to notice the provisions of Sections 20-A, 20-B, 20-C and 20-F(1) and (2), the interpretation of which will have far-reaching impact on the future of protected monuments of national and international importance including Jantar Mantar, New Delhi. These sections read as under:

"20-A. 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 4-A.

(2) Save as otherwise provided in Section 20-C, 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 reconstruction 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) No. S.O. 1764, dated 16-6-1992 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 No. 24/22/2006-M, dated 20-7-2006 (subsequently referred to as the Expert Advisory Committee in orders dated 27-8-2008 and 5-5-2009).

(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.

20-B.Declaration of regulated area in respect of every protected monument.—(1) Every area, beginning at the limit of prohibited area in respect of every ancient monument and archaeological site and remains, declared as of national importance under Sections 3 and 4 and extending to a distance of two hundred metres in all directions shall be the regulated area in respect of every ancient monument and archaeological site and remains:

Provided that the Central Government may, by notification in the Official Gazette, specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A:

Provided further 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 regulated area in respect of such protected monument, shall be deemed to be the regulated area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction in such regulated area 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.

20-C.Application for repair or renovation in prohibited area, or construction or reconstruction 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 reconstruction 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 reconstruction or repair or renovation, as the case may be.

20-F.Constitution of National Monuments Authority.—(1) The Central Government shall, by notification in the Official Gazette, constitute an Authority to be called as the National Monuments Authority.

(2) The Authority shall consist of—

(a) a Chairperson, on whole-time basis, to be appointed by the President, having proven experience and expertise in the fields of archaeology, country and town planning, architecture, heritage and conservation-architecture or law;

(b) such number of members not exceeding five whole-time members and five part-time members to be appointed, on the recommendation of the Selection Committee referred to in Section 20-G, by the Central Government, having proven experience and expertise in the fields of archaeology, country and town planning, architecture, heritage, conservation-architecture or law;

(c) the Director General as member, ex officio.”

45. What has been done by enacting Sections 20-A and 20-B is to give legislative mandate to the concept of

prohibited and regulated areas respectively for the purposes of mining operation and construction. Before the 2010 Amendment, the Central Government could issue notification under Rule 31 read with Rule 32 and declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction or both. With the insertion of Section 20-A it has been made clear 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 one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument.

46. Not only this, by virtue of the proviso to Section 20-A(1) the Central Government has been clothed with the power to extend the prohibition beyond 100 m by issuing a notification in the Official Gazette keeping in view the classification of any protected monument or protected area, as the case may be, under Section 4-A. Of course, this power can be exercised only on the recommendations of the Authority as defined in Section 2(da) and constituted under Section 20-F. Somewhat similar provision has been made in Section 20-B for the regulated area in respect of every ancient monument and archaeological site and remains. The proviso to that section empowers the Central Government to issue notification in the Official Gazette and specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A.

(2), it has been made clear that no person other than an Archaeological Officer shall carry out any construction in any prohibited area. This is subject to Section 20-C, which can be treated as an exception to Section 20-A(2). That section lays down that any person who owns any building or structure, which existed in a prohibited area before 16-6-1992 or had been subsequently constructed with the approval of the Director General may carry out any repair or renovation of such building or structure by making an application to the competent authority. The term "renovation" appearing in Section 20-C will take its colour from the word "repair" appearing in that section. This would mean that in the garb of renovation, the owner of a building cannot demolish the existing structure and raise a new one and the competent authority cannot grant permission for such reconstruction.

47. In terms of Section 20-A(2), it has been made clear that no person other than an Archaeological Officer shall carry out any construction in any prohibited area. This is subject to Section 20-C, which can be treated as an exception to Section 20-A(2). That section lays down that any person who owns any building or structure, which existed in a prohibited area before 16-6-1992 or had been subsequently constructed with the approval of the Director General may carry out any repair or renovation of such building or structure by making an application to the competent authority. The term "renovation"

appearing in Section 20-C will take its colour from the word "repair" appearing in that section. This would mean that in the garb of renovation, the owner of a building cannot demolish the existing structure and raise a new one and the competent authority cannot grant permission for such reconstruction.

48. Section 20-A(3) lays down that the Central Government or the Director General can, in exceptional cases and having regard to the public interest, pass a reasoned order and permit a public work or any project essential to the public or other construction in a prohibited area provided that such construction does not have substantial adverse impact on the preservation, safety, security of, or access to the protected monuments or its immediate surrounding. The use of the expression "such other work or project" in clause (b) of Section 20-A(3), if interpreted in isolation, may give an impression that the Central Government or the Director General is empowered to allow any other work or project by any person in the prohibited area but, in our view, the said expression has to be interpreted keeping in view the mandate of Article 49 of the Constitution and the objects sought to be achieved by enacting the 1958 Act i.e. preservation of ancient and historical monuments, archaeological sites and remains of national importance. This would necessarily imply that "such other work or project" must be in the larger public interest in contrast to private interest.

49. In other words, in exercise of power under Section 20-A(3), the Central Government or the Director General cannot pass an order by employing the stock of words and phrases used in that section and permit any construction by a private person de hors public interest. Any other interpretation of this provision would destroy the very object of the 1958 Act and the prohibition contained in the Notification dated 16-6-1992 and sub-section (1) of Section 20-A would become redundant and we do not think that this would be the correct interpretation of the amended provision. It also needs to be emphasised that public interest must be the core factor to be considered by the Central Government or the Director General before allowing any construction and in no case the construction should be allowed if the same adversely affects the ancient and historical monuments or archaeological sites.

50. We may now revert to the impugned judgment in these appeals. In our view, the Archaeological Survey of India is fully justified in making a grievance that the Division Bench of the High Court was not justified in directing the Central Government to review the prohibition contained in the Notification dated 16-6-1992. The High Court's anxiety to maintain a balance between the dire necessity of protecting historical monuments of national and international importance and development of infrastructures is understandable, but it is not possible to approve the fiat issued to the Central Government to review the prohibition contained in the Notification dated 16-6-1992. That notification was issued by

the Central Government for implementing the policy enshrined in Article 49 of the Constitution and the 1958 Act i.e. to preserve and protect ancient and historical monuments and archaeological sites and remains of national importance.

51. Section 19 of the 1958 Act contains a restriction against construction of any building within the protected area or carrying out of any mining, quarrying, excavating, blasting or any other operation of similar nature in such area. Rules 31 and Rules 32 of the Rules empower the Central Government to declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction. The Central Government must have issued the Notification dated 16-6-1992 after consulting experts in the field and keeping in view the object of the 1958 Act. Therefore, in the name of development and accommodating the need for multi-storeyed structures, the High Court could not have issued a mandamus to the Central Government to review/reconsider the Notification dated 16-6-1992 and that too by ignoring that after Independence a large number of protected monuments have been facing the threat of extinction and if effective steps are not taken to check the same, these monuments may become part of history.

52. One of such monuments is Jantar Mantar, New Delhi. Some of its instruments have become unworkable/non-functional. This is largely due to construction of multi-storeyed structures around Jantar Mantar. Therefore, we have no hesitation to hold that the High Court was not justified in directing the Central Government to review or reconsider the Notification dated 16-6-1992 and, to that extent, the impugned judgment is liable to be set aside. We may add that with the insertion of Sections 20-A and 20-B, the direction given by the High Court for review of the Notification dated 16-6-1992 has become infructuous and the Government is no longer required to act upon the same."

13.2 Though as insisted by learned Senior counsel for the petitioner validity of the Amendment Act, 2010 has not been questioned in the aforesaid case before the Apex Court, however, the Apex Court has read and interpreted the essentiality and imperativeness of the aforesaid provisions in the light of the mandate of the Article 49 of

the Constitution of India and the object sought to be achieved through enacting Act, 1958 namely, preservation of Ancient and historical monuments, archeological sites and remains of national importance.

13.3 Notwithstanding the same since petitioner has raised constitutionality of the aforesaid provisions on the premise of arbitrariness and violation of constitutional rights, this Court adverts to the said contentions as under;

13.4 A statute can be held to be unconstitutional only if it is proved that;

- (i) It lacks legislative competence,
- (ii) It violates fundamental rights, and
- (iii) It suffers from manifest arbitrariness.

The petitioner has not questioned the aforesaid provisions on the ground of legislative competence. Therefore, the petition is only on grounds (ii) and (iii).

13.5 The grounds of challenge to a statute on the vice of arbitrariness is settled by the Apex Court in the case of

Shri Ram Krishna Dalmia and others (supra),

wherein, at paragraph No.11, it has held as under.

"11. The principal ground urged in support of the contention as to the invalidity of the Act and/or the notification is founded on Article 14 of the Constitution. In Budhan Choudhry v. State of Bihar, a Constitution Bench of seven Judges of this Court at p. 1048-49 explained the true meaning and scope of Article 14 as follows;

" The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, Chiranjit Lal Choudhuri v. Union of India, State of Bombay v. F.N. Balsara, State of West Bengal v. Anwar Ali Sarkar, Kathi Raning Rawat v. State of Saurashtra, Lachmandas Kewalram Ahuja v. State of Bombay, Qasim Razvi v. State of Hyderabad and Habeeb Mohamad v. State of Hyderabad. It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish-

- (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;*
- (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;*

- (c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;*
- (d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;*
- (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and*
- (f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."*

13.6 Further, in the case of ***Jia Lal (Supra)***, the Apex Court at paragraph Nos.7 and 8 has held as under:

" 7. Now the principles governing the application of Article 14 are well settled and there is no need to restate them. Article 14 prohibits hostile legislation directed against individuals or groups of individuals, but it does not forbid reasonable classification. And in order that a classification might be valid, it must rest on an intelligent differentia which distinguishes it from others and that further that must have a reasonable relation to the object of the legislation. There can be a valid classification based on a geographical differentia, but even then, that differentia must be pertinent to the object of the legislation. The short question for decision therefore is whether the differentiation between the territories north of the Jumna and Ganga, on the one hand and the other territories, on the other, has any relevance to the object of the legislation. As already pointed out this differentiation came to be made as a result of the political situation during 1857, and has reference to the fact that the largest opposition to the British Government came from the Taluqdars to the north of the Jumna and Ganga. But more than a century has since elapsed and the conditions have so radically changed that it is impossible now to sustain any distinction between the

territories north of the Jumna and Ganga and the other territories on any ground pertinent to the object of the law in question and on the well known principles applicable to the matter it must be held that the differentiation is discrimination repugnant to Article 14. That was the view taken by the Allahabad High Court in Mehar Chand v. State¹ and we are in agreement with it. The correctness of this decision on this point has not been assailed before us.

8. On this conclusion two questions arise for decisions : (i) Is Section 29, omitting that part of it which contravenes Article 14, valid, and are the prosecutions in the instant cases bad for want of sanction thereunder; and (ii) if Section 29 is void in toto whether Section 19 also becomes void and unenforceable."

13.7 The Apex Court in the case of **Anwar Ali Sarkar (supra)**

at paragraphs 6, 7, 9 and 21 has held as under:

" 6. In order to appreciate the points that have been canvassed before us, it would be convenient first of all to refer to the provision of Article 14 of the Constitution with a view to determine the nature and scope of the guarantee that is implied in it. The article lays down that:

"14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

It is, in substance, modelled upon the "equal protection clause" occurring in the Fourteenth Amendment of the American Constitution with a further addition of the rule of "equality before the law", which is an established maxim of the English Constitution. A number of American decisions have been cited before us on behalf of both parties in course of the arguments; and while a too rigid adherence to the views expressed by the Judges of the Supreme Court of America while dealing with the equal protection clause in their own Constitution may not be necessary or desirable for the purpose of determining the true meaning and scope of Article 14 of the Indian Constitution, it cannot be denied that the general principles enunciated in many of these cases do afford considerable help and guidance in the matter.

7. It can be taken to be well settled that the principle underlying the guarantee in Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made

available to them irrespective of differences of circumstances [*Charanjit Lal Chowdhury v. Union of India*, 1950 SCR 869 : 1950 SCC 833] . It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed [*Old Dearborn Distributing Co. v. Seagram Distillers Corp.*, 81 L Ed 109 : 299 US 183 (1936) : 1936 SCC OnLine US SC 145] . Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same. This brings in the question of classification. As there is no infringement of the equal protection rule, if the law deals alike with all of a certain class, the legislature has the undoubted right of classifying persons and placing those whose conditions are substantially similar under the same rule of law, while applying different rules to persons differently situated. It is said that the entire problem under the equal protection clause is one of classification or of drawing lines [*Dowling : Cases on Constitutional Law*, 4th Edn. 1139.] . In making the classification the legislature cannot certainly be expected to provide "abstract symmetry". It can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even "degrees of evil" [*Skinner v. Oklahoma*, 86 L Ed 1655 : 316 US 535 at p. 540 (1942) : 1942 SCC OnLine US SC 125] , but the classification should never be arbitrary, artificial or evasive. It must rest always upon real and substantial distinction bearing a reasonable and just relation to the thing in respect to which the classification is made; and classification made without any reasonable basis should be regarded as invalid [*Southern Railway Co. v. Greene*, 54 L Ed 536 : 216 US 400 at p. 412 (1910) : 1910 SCC OnLine US SC 59] . These propositions have not been controverted before us and it is not disputed also on behalf of the respondents that the presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it, to show that there has been transgression of constitutional principles.

9. As regards the first point, it cannot be disputed that a competent legislature is entitled to alter the procedure in criminal trials in such way as it considers proper. Article 21 of the Constitution only guarantees that:

"21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law."

The word "law" in the article means a State made law [*A.K. Gopalan v. State of Madras*, 1950 SCR 88 : 1950 SCC 228] , but it must be a valid and binding law having regard not merely to the competency of

the legislature and the subject it relates to, but it must not also infringe any of the fundamental rights guaranteed under Part III of the Constitution. A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination [Weaver : Constitutional Law, p. 407.] . The two cases referred to by the learned Attorney General in this connection do not really support his contention.

21. *It appears to be an accepted doctrine of American courts that the purpose of the equal protection clause is to secure every person within the States against arbitrary discrimination, whether occasioned by the express terms of the statute or by their improper application through duly constituted agents. This was clearly laid down in Sunday Lake Iron Co. v. Wakefield [Sunday Lake Iron Co. v. Wakefield, 62 L Ed 1154 : 247 US 350 (1918) : 1918 SCC OnLine US SC 148] . In this case the complaint was against a taxing officer, who was alleged to have assessed the plaintiff's properties at their full value, while all other persons in the county were assessed at not more than one-third of the worth of their properties. It was held that the equal protection clause could be availed of against the taxing officer; but if he was found to have acted bona fide and the discrimination was the result of a mere error of judgment on his part, the action would fail. The position, therefore, is that when the statute is not itself discriminatory and the charge of violation of equal protection is only against the official, who is entrusted with the duty of carrying it into operation, the equal protection clause could be availed of in such cases; but the officer would have a good defence if he could prove bona fides. But when the statute itself makes a discrimination without any proper or reasonable basis, the statute would be invalidated for being in conflict with the equal protection clause, and the question as to how it is actually worked out may not necessarily be a material fact for consideration. As I have said already, in the present case the discrimination arises on the terms of the Act itself. The fact that it gives unrestrained power to the State Government to select in any way it likes the particular cases or offences which should go to a Special Tribunal and withdraw in such cases the protection which the accused normally enjoy under the criminal law of the country, is on the face of it discriminatory."*

14. The consistent view and the law laid down by the Apex Court on the anvil of Article 14 as noted above even as found at Paragraph No.12 of the judgment of the Apex Court in the case of ***Rama Krishna Dalmia*** (supra) is that a statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court.
15. The provisions of Section 20A, 20B and 20C of the Act, 1958 which were inserted by Amendment Act, 2010 have clearly demarcated and classified the area of 100-metres from the protected monuments to be prohibited area and 200-metres from the protected monument to be regulated area. The provisions have thus been made specifically applicable with respect to the persons/people residing or the properties falling within the defined 'prohibited' and 'regulated' areas which is very much discernible and distinguishable. Considering the object and purport of the Act and the constitutional mandate of Article 49 of the Constitution of India said classification

cannot be found to be unreasonable, ambiguous or vague and unconnected as sought to be contended by the counsel for the petitioner. In any event, the reason and logic behind such classification falls within the expert domain of concerned competent authority under the Act, 1958.

16. Appropriate also to refer to Article 51A(f) of the Constitution of India, which casts one of the fundamental duties on every citizen of India to value and preserve the rich heritage of our composite culture.
17. As rightly pointed out by the learned ASGI, rejection of permission to put up construction in furtherance of a statute, which is regulatory in nature, cannot be the ground to quash, set aside, and declare the statute unconstitutional, particularly when the party seeking such annulment has not discharged the burden cast on him.
18. The petitioner, who owned a larger extent of the site, has already put up construction utilizing half of the site. It is only on the remaining vacant portion that the petitioner intends to put up construction. Even as admitted by the petitioner in the writ petition, as noted above, there is no

provision under the Act providing for acquisition of the land. Therefore, the question of payment of compensation would not arise. As rightly pointed out by the learned ASGI, what the impugned legislation intends to achieve is only the purpose of regulating the area falling within the 'prohibited zone' and the 'regulated zone'. The petitioner, not being able to put up a construction on the vacant portion of the subject site, cannot, therefore be equated to expropriation of the land. Reduction in the utilization of the land also cannot be equated with expropriation of the land.

19. Section 27 of the Act reads as under:

"27. Compensation for loss or damage.—Any owner or occupier of land who has sustained any loss or damage or any diminution of profits from the land by reason of any entry on or excavations in, such land or the exercise of any other power conferred by this Act shall be paid compensation by the Central Government for such loss, damage or diminution of profits."

20. Petitioner in his petition at paragraph No.28 has averred that the petitioner will be entitled to seek compensation under Section 27 of the Act in respect of diminution of profit or loss or damage. Since the petitioner's property is vacant portion of his site, he cannot claim diminution of

profit or loss or damage to the property/land itself. Thus, the petitioner himself is clear that the Act does not provide either for acquisition or payment for any diminution of profit, loss, or even damage in respect of vacant land. Therefore the reliance placed by the learned counsel for the petitioner on to the judgment of the Apex Court in the cases of **KT Plantation** and **Janabai** (Supra) are of no avail.

21. In the said judgments the question that fell for consideration are with reference to power of eminent domain and deprivation of right to property and consequences of protection under Article 300A of the Constitution of India. At paragraph Nos.189 to 192, 198 in the case of **KT Plantation**(supra) the Apex Court has held as under;

" 189. Requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a precondition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in that article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors.

190. Article 300-A would be equally violated if the provisions of law authorising deprivation of property have not been complied with. While enacting Article 300-A Parliament has only borrowed

Article 31(1) (the "Rule of Law" doctrine) and not Article 31(2) (which had embodied the doctrine of eminent domain). Article 300-A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive.

191. *The legislation providing for deprivation of property under Article 300-A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(g), 26(b), 301, etc. Thus in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution as indicated above.*

192. *At this stage, we may clarify that there is a difference between "no" compensation and "nil" compensation. A law seeking to acquire private property for public purpose cannot say that "no compensation shall be paid". However, there could be a law awarding "nil" compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the Government to establish validity of such law. In the latter case, the Court in exercise of judicial review will test such a law keeping in mind the above parameters.*

198. *Article 300-A, unlike Articles 31-A(1) and 31-C, has not made the legislation depriving a person of his property immune from challenge on the ground of violation of Article 14 or Article 21 of the Constitution of India, but let us first examine whether Article 21 as such is available to challenge a statute providing for no or illusory compensation and, hence, expropriatory."*

22. The facts involved in the said case and the law laid down thereunder are distinguishable from that of the one at hand. In that, the Act, 1958 and the Amendment Act, 2010 does not seek to acquire and expropriate the property of any citizen, it has only intended to prohibit and regulate properties falling within the areas declared and defined under Sections 20A, 20B and 20C as noted above.

23. The other contention of the learned counsel for the petitioner with regard to retrospective effect of the Amendment Act, 2010, from 16.06.1992, being unreasonable, arbitrary and illogical, has been adverted to by learned ASGI referring to the Rules, 1959.
24. Annexure-R4 of the Rules is stated to have been in operation from 15.10.1959, which empowered the Central Government to notify adjoining areas of the protected monuments as prohibited and regulated areas. It appears that, by a notification dated 16.06.1992, as per Annexure-R5, the Director General uniformly declared and demarcated 100-metres as a prohibited area and 200-metres as a regulated area around all the protected monuments. The Amendment Act, 2010 is stated to have been brought in only to crystallize and validate the adoption of the said notification dated 16.06.1992. It is therefore submitted that the cutoff date of 16.06.1992 is relatable to the date of the said notification. This aspect of the matter has been taken note of even by the Apex Court in the case of **ASI Narender Anand** (Supra). There is no counter or rebuttal to the said submission.

25. In the absence of the petitioner making out a case of any constitutional infirmity, the relief sought at column (A) cannot be granted.

26. **Regarding Point No.2:**

As regards the third prayer for a direction to frame the site plans and Heritage Bye-laws under the Rules, 2011, as rightly pointed out by the learned ASGI, it cannot be a ground to strike down the substantive provisions of law. It is only a matter of administrative implementation; in any event, a writ in the nature sought cannot be granted in this regard, inasmuch as same falls within the legislative domain and legislative prerogative.

27. **Regarding Point No.3 :**

As regards the relief in the nature of a direction by issuing a mandamus directing the respondent to permit the petitioner to put up construction with such conditions. It is necessary to note that, in a communication as per Annexure-E, the proposed construction site is at a distance of 59-metres from the Madhugiri Fort. Petitioner in his reply dated 15.09.2015, has contended that the

distance is about 200-metres from the Southern side of the fort wall and that it is attached to a new government school building called Government Kote Primary School. However, the impugned communication in Form No.V dated 04.07.2016 does not seem to have addressed this factual aspect of the matter, namely whether or not the proposed site of construction is situated within 59-metres or 200-metres from the Southern side of the fort wall as claimed by the petitioner.

28. It is also necessary to note that, at the request of the learned counsel for the petitioner for conducting a survey and inspection, this Court, by order dated 10.04.2023, directed the respondents to ascertain the damage or obstruction that would be caused to the notified monument for the purpose of granting permission to the petitioner.

29. In response thereto, a report had been submitted by the respondents along with the memo dated 30.06.2023; the said report reads as under:

"F. No. 131/CC/2022-M-913

Dated :15.06.2023

To,
The Regional Director (South),
Archaeological Survey of India,
Bangalore.

Sir,

Sub: WP.10451/2018 NOC near CPM Madhugiri Fort - reg.

Ref: Your email dated 01.06.2023

On the subject and reference cited above, the views of the undersigned in connection with the WP 10451/2018-NOC for the construction of House with in the prohibited area of the Fort, Madhugiri, Tumukuru district by the Petitioner Sri. B.R. Ramakrishna S/o late B. Rangappa, Advocate, Opp: Kote Primary School & Police station, Madhugiri Town, Tumkur District is furnished below.

1. Madhugiri fort is one of the important historical forts in Karnataka was constructed during the time of the Vijayanagara and Nayak rulers.

2. As per the Ancient Monuments and Archaeological Sites and Remains Act 1958 Section 20 A and AMASR Amendment and Validation Act 2010 no new construction of building is permitted within the Prohibited Area of a Centrally Protected Monument. Based on the above act only, the Competent Authority had refused permission for constructing a house to the applicant i.e., Shri. B.R. Ramakrishna, Advocate, Madhugiri Town in 2018.

3. Construction of New building shall adversely affect the aesthetic view of the Fort and shall change the Cultural landscape of the fort, as already some of the old Government buildings hiding a part of the Fort.

4. If permission is granted to the applicant, other people will also seek permission for construction of new building will further seriously affect the cultural landscape of the monument which is an integral part of the monument.

I am enclosing herewith the report along with relevant documents and maps submitted by the technical team of this office for your kind information and necessary action, please.

Yours faithfully,
Sd/-
Superintending Archaeologist"

30. Perusal of the aforesaid report indicates that during the site visit, in the presence of the petitioner and his counsel, it was found that the vacant portion of the subject site over which the proposed construction is sought to be made is situated at a distance of 59-metres, falling within the prohibited area of the centrally protected monument, and the said site is clearly visible. The report also refers to old buildings like Government schools, hospitals, Police Station and a few residential buildings which are in existence. Photographs of the existence of such buildings are also furnished. This factual aspect of the matter has not been disputed by the petitioner. However, an objection to the said report was filed, pointing out that the said report had not stated how the proposed construction would cause damage to or obstruction to the monument.
31. Even the survey report submitted by the respondent pursuant to the directions of this Court does not give the basis on which these 59-metres have been determined. Even though 200-metres claimed by the petitioner in his reply dated 15.09.2015 appears to be approximately equal to the distance of 59-metres indicated by the

respondent authorities, this factual aspect of the matter has remained undetermined. This is particularly in view of the fact that, admittedly, the site over which the petitioner has sought to put up construction is surrounded by buildings occupied by Government agencies, schools, and a 40-foot-wide road.

32. In light of the submission made by the learned ASGI that the respondent-Authorities may consider the request for permission if the site on which the petitioner is seeking construction falls within the regulated area, this Court deems it appropriate to direct the respondent authority who shall conduct a fresh inspection and find out if the proposed construction of the petitioner would fall within the prohibited area or the regulated area or at a distance of 200-feet from the external wall of the fort as claimed by the petitioner. Such exercise shall be undertaken by the respondent-Authorities within three months from the date of receipt of the certified copy of this order, and the same shall be communicated to the petitioner in writing.

33. Accordingly, following:

ORDER

(i) Petition is ***partly allowed***.

(ii) Consequently reliefs sought at prayer Column Nos.

A and C are rejected.

(iii) Respondent Nos.1 and 2 are directed to reconsider the representation of the petitioner after conducting fresh inspection/survey of the area with the distance from the notified monument and pass orders afresh one way or the other and communicate to the petitioner as expeditiously as possible.

**Sd/-
(M.G.S. KAMAL)
JUDGE**

RL/RU