

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(PIL) No. 6570 of 2022**

Society for Preservation of Tribal Culture and Natural Beauty, a Society registered under the Society Registration Act, 1860, having registration No. 92/2001/2, through its president Sri Ajay Kumar Jain S/o Late Nagbhushan Jain, having Office at Lower Burdwan Compound, PO PS Lalpur, District Ranchi.

... **Petitioner**

Versus

1. Archaeological Survey of India through its Director General, having Office at Nirman Bhawan, Janpath, PO PS Janpath, New Delhi-110011.
2. Archaeological Survey of India, Ranchi Circle, through its Superintendent having Office at Jain Villa, PP Compound, PO GPO, PS Hindpiri, District Ranchi.
3. Secretary, Ministry of Culture, Secretary, having Office at 502-C Wing, Shastri Bhawan, PO PS Parliament Street, New Delhi 110001.
4. Secretary, Department of Tourism, Arts, Culture, Sports and Youth Affairs, State of Jharkhand, having Office at Project Building, PO PS Dhurwa, District Ranchi.
5. Deputy Commissioner, Ranchi.

... **Respondents**

**CORAM : SRI SANJAYA KUMAR MISHRA, C.J.
SRI ANANDA SEN, J.**

For the Appellants: Mr. Shailesh Poddar, Advocate
For the Respondents: Mr. Prashant Pallav, ASGI
Mr. Ashutosh Anand, AAG III

ORDER

Reserved on 31.07.2023

Pronounced on 28.08.2023

Per Ananda Sen, J.

1. By filing this writ petition in the nature of Public Interest Litigation, the writ petitioner, which is a Society registered under the Societies Registration Act, 1860, has approached this Court, praying for the following reliefs:-

- i) For a writ, order or directions upon the Respondent No.1 and 2 to act upon the letter dated 27.12.2018 sent by the Petitioner highlighting the direct evidence of Brahma Mandir being 100 years old;
- ii) For a writ, order or directions upon the Respondent No.1 and 2 to take steps as per Section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 to declare the Brahma Mandir situated on the Tagore Hill as an ancient monument of National Importance in light of the fresh evidence submitted by the Petitioner;

-: 2 :-

iii) For a writ, order or directions upon the Respondent/s concern to protect, restore and preserve the Brahma Mandir and other structures from further dilapidation at the Tagore Hill by including cleanliness and stopping unauthorized construction at the Tagore Hill with immediate effect;

2. By moving this Public Interest Litigation, counsel for the petitioner submits that the petitioner has no personal interest in filing this writ petition. He submits that the petitioner Society has been working on preservation and protection of natural beauty of the Ranchi Town. *Tagore Hill* is attached with the cultural heritage of Ranchi. There are four main structures situated on the *Tagore Hill*, which are: -

(i) "**Brahmo Mandir**" – On the top of the hill, a permanent canopy like structure, which was constructed for meditation.

(ii) "**Shanti Dham**" - the house which was got constructed by Jyotirindranath Tagore where he spent his last years of life;

(iii) "**Kusumtal**" – A place beneath the Kusum Tree;

(iv) "**Samadhithal**" – Crescent shaped, pedestal like structure constructed by the followers and companions of Jyotirindranath Tagore over the western slope of the Hill where corporal relics of Jyotirindranath Tagore were preserved.

He submits that the *Tagore Hill* and the aforesaid structures situated thereon are in very bad shape now and due to non-caring attitude of the State Government, the structures are depleting. Tagore Hill was the property of renowned Tagore family. It is Jyotirindranath Tagore, the elder brother of Gurudev Rabindranath Tagore, who got the property/hill and constructed a house and *Brahmo Mandir*, which is now more than 100 years old. On the top of the hill a permanent canopy like structure is there, which is known as "*Brahmo Mandir*". It is not a temple where any idol is worshiped, rather it is a place for meditation where family members of Gurudev Rabindranath Tagore used to meditate. There is a place called "*Kusumtal*" (*beneath the Kusum Tree*), and a "*Samadhithal*" in *Tagore Hill*, structures of which also need to be maintained. The building "*Shanti Dham*" where Jyotirindranath Tagore and his family resided, also needs to be preserved, but the respondents have shown utmost apathetic approach in preserving the

historical and cultural heritage of the city, which forced the petitioner in filing this Public Interest Litigation. Counsel for the petitioner further submits that part of the hill has been encroached and several constructions have sprouted at the instance of encroachers and land grabbers, which is illegal, which also need to be removed. He submits that on earlier occasions also petitioner had moved this Court in W.P.(PIL) No. 1521 of 2007, W.P.(PIL) No. 6360 of 2008 and W.P.(PIL) No.1568 of 2017, which were all disposed of. Since the petitioner has found several materials now to suggest that the building and structures on *Tagore Hill* are more than 100 years old and need to be preserved, he has approached this Court by filing this Public Interest Litigation.

3. Counsel for the State of Jharkhand submitted that under the Ancient Monuments and Archeological Sites and Remains Act, 1958 (hereinafter referred to as '**the Act**') it is the Central Government which has the power to declare a structure or ancient site, as the case may be as, of national importance through notification in the official Gazette of India. They have not denied the historical, cultural and archeological importance of the *Tagore Hill* and the *Brahmo Mandir*.

4. Archeological Survey of India and the Ministry of Culture have filed their counter affidavit, wherein they have stated that Section 2 of the Ancient Monuments and Archeological Sites and Remains Act specifies criteria for protection which includes that the monuments or sites should be historical, archaeological for artistic interest and which has been in existence for not less than 100 years but there is no direct evidence that the *Brahmo Temple / Mandir (Tagore Hill)* is 100 years old. Furthermore, the same does not fulfil the other criteria of historical archaeological, architectural or artistic interest. It has been stated that *Brahmo Temple* has already been examined by the Archaeological Survey of India and it has been observed that it does not fulfil the prime criteria laid down under the Act. Therefore, it is not fit for protection by Archaeological Survey of India. It has also been stated that the same issue, in a Public Interest Litigation filed by the petitioner earlier, was already heard and disposed of by this Court, hence, this writ petition is liable to be dismissed.

5. Before proceeding further, it is necessary to highlight the previous round of litigations pursued by this petitioner before this Court for preserving the Tagore Hill and the structures thereon. The first Public Interest Litigation by this petitioner was W.P.(PIL) No.1521 of 2007, which was disposed of on 08.01.2008 with the following order: -

“2. 8.1.2008 The petitioner can approach the concerned authorities for the required reliefs.

With this observation, this PIL is disposed of.”

Further, another Public Interest Litigation was filed in 2008 being W.P.(PIL No. 6360 of 2008, which was disposed of on 03.02.2011, with a direction to the petitioner to approach the Archaeological Survey of India for getting the monument declared as the monument of national importance under the Act and liberty was given to approach the State of Jharkhand seeking for appropriate relief in this regard.

Another Public Interest Litigation being W.P.(PIL) No. 1568 of 2017 was filed, which was allowed to be withdrawn on 21.03.2018.

6. We have heard the counsel for the parties and have gone through the records.

7. “Tagore Hill” as it is known, is a hill in the town of Ranchi. The said hill is associated with the revered Tagore family : Jyotirindranath Tagore, who was the elder brother of Gurudev Rabindranath Tagore. He was a writer, social reformer, composer, painter. He inspired Gurudev Rabindranath Tagore in his childhood in many ways. Gurudev Rabindranath Tagore described his elder brother Jyotirindranath Tagore and his wife Kadambari Devi as an inspiration, who were responsible in shaping his journey as a poet and an artist. In ***Jyotirindranath Jiban-Smriti (The Reminiscence of Jyotirindranath Tagore)***¹, by Vasantakumar Chattopadhyay, which was first published in 1920, at page 22, it has been narrated by the author of the book that during the last 17 years of his life, Jyotirindranath Tagore self-exiled from Kolkata and had built “*Shanti Dham*” in the Morahabadi Hills of Ranchi. He stayed in “*Shanti Dham*” and spent rest of his life there. On a wall of “*Shanti Dham*”, there was a pencil sketch drawn by Kadambari Devi. Further, there is a reference in the said book, which mentions that in the beginning of 1908, Jyotirindranath Tagore, Satyendranath Tagore (the first Indian ICS Officer), Gyanadanandini Devi (wife of Satyendranath Tagore) visited Ranchi and fell in love with the place. Jyotirindranath Tagore was in search of an old house or land as he had decided to spend rest of his life there. With the help of PWD Engineer Mahendra Nath Dutta, he arranged to purchase Morahabadi Hills. The book further narrates that Jyotirindranath Tagore in his Diary had made an entry on 23rd October, 1908, wherein he had written “today the hill is

¹ ***Jyotirindranath Jibansmriti (The Reminiscence of Jyotirindranath Tagore)*** (First Published in 1920) - written by Vasantakumar Chattopadhyay and thereafter First Subarnarekha Edition 2002 was edited by Prashanta Kumar Paul. (Source : *the Library of Rabindra Bharti Museum, Jorasanko*).

registered” (*aaj pahar ta register holo*). The diary entry on 21st December suggested that he decided to construct a house on the hill. Thereafter the road to climb the hill and the house got constructed. “*Shanti Dham*” was inaugurated on 17th April, 1910. Jyotirindranath Tagore breathed his last at “*Shanti Dham*”, *Tagore Hill*, Ranchi on 4th March, 1925.

In another book titled *Jyotirindranath*² at page 178 thereof, there is a short description of Jyotirindranath’s presence in Ranchi. It is mentioned there that in his last phase of life he resided at Ranchi with his elder brother Satyendranath Tagore. The book also mentions that a house named as “*Shanti Dham*” was constructed and on summit of the said hills, a place of worship was constructed. In the said book, reference of “*Jyotirindranather Jiban-Smriti*” (*The Reminiscence of Jyotirindranath Tagore*) also finds place. From the said book, we get to know that at this place he translated Bal Gangadhar Tilak’s “*Geeta Rahasya*” in Bengali from Marathi. In a letter to his very close relative, Jyotirindranath narrated how they celebrated festivals in Ranchi. The book also mentions that he breathed his last in “*Shanti Dham*” at Ranchi on 4th March, 1925.

8. From the aforesaid two books, which have thrown great light on Jyotirindranath Tagore’s life, authenticity of which cannot be doubted, it is clear that the property belonged to the respected Tagore family, where Jyotirindranath Tagore, elder brother Gurudev Ravindranath Tagore had spent his last years of life about 15 years and he also breathed his last here. It is also clear that ‘*Shanti Dham*’ the house where the family was residing, was constructed on this hill situated at Morahabadi in April 1910, and on the top of the hill ‘*Brahmo Mandir*’ was constructed. The narrations in the books suggest that this structure ‘*Brahmo Mandir*’ is more than 100 years old, as on today.

9. Along with the writ petition, petitioner has annexed the counter affidavit filed by the Archeological Survey of India, Ranchi Circle, in W.P.(PIL) No.6360 of 2008. In the said counter affidavit at paragraph 6, the Archeological Survey of India, Ranchi Circle has admitted that they had sent a detailed proposal to the Director General, Archeological Survey of India, New Delhi vide letter No.3/2/Mont.-04-05-566 dated 22.07.2008 to declare Tagore Hill as a protected monument of National Importance under the Ancient Monuments and Archeological Sites and Remains Act, 1958. They further stated that the Director had asked for more historical significance and period of construction of structures at Tagore Hill and exact date of its construction. In

² *Jyotirindranath* by Sri Manmathnath Ghosh, published 1334 Bangabd (1927-28) [Source National Library, Kolkata].

paragraphs 7 & 8, the Archeological Survey of India has stated that they are only recommending authority and it is the Central Government, who can declare the monument to be of national importance. In the said counter affidavit, the proposal sent by them in Form 'B' has been annexed. From the said proposal, the importance of Tagore Hill and the structures like 'Brahmo Mandir' 'Kusumtal', 'Samadhithal' etc. is reflected. The details of the structures, their artistic value have also been mentioned. The structure of 'Brahmo Mandir' has been described in the said report as under: -

He constructed a pavilion or an open mandap like artistic structure on the top of this hill, popularly known as Brahma Mandir or shantiyalaya. Brahma Mandir is constructed on a square platform measuring 6.10 x 6.10 mts. In later phase, this platform was extended upto the size of 8.50 x 8.50 mts. A flight of eleven steps are provided from the south side to approach this platform. On this square platform, the original Brahma Mandir is constructed. It is also a square structure measuring 3.10 x 3.10 mts. It is almost 75 cm high from the above mentioned platform. A flight of two steps are provided from north to approach Brahma Mandir. It is open from all the sides. The ceiling is flat from inside which is about 2.70 mts. High from the floor of the Brahma Mandir. The roof is resting on eight beautifully carved pillars, three on each side in which corner pillars are common. The lower portion of all the eight pillars is carved in different geometric shapes whereas the upper portion is octagonal. Beautifully carved multi-arched slab are fixed on the top portion, joining two pillars to each other.

The outstanding feature of Brahma Mandir is its Shikhara which is influenced with Nagara style of temple architecture. The Shikhara is curvilinear comparable with those of Khajuraho group of temples. All the four sides of the shikhara are characterized by in intricate arrangement of subsidiary shikhara varying to the main shikhara at different height. As a result, four subsidiary shikharas are visible from all sides excluding the main one, which improves the beauty of the Brahma Mandir magnificently. The Brahma Mandir is constructed of bricks but finally veneering work was done by fixing of carved and designed reddish sandstone blocks. Later on a coat of red colour is also applied over it, now faded at places.

The report also refers about the *Samadhithal* of Jyotirindranath and the structure of the same, which reads as under: -

Samadhithal – On 4th March, 1925, Jyotirindranath Tagore breathed his last at this hill and cremated at local Harmu Mukti Dham. His followers and companions collected his corporal relics and constructed a simple Samadhi over it in the western slope of this hill. The Samadhi is crescentic shaped, pedestal like structure made of bricks and plastered with lime and surkhi. In front of Samadhi about 3 x 4 mts area was also plastered with lime and surkhi. This is the most sacred place for not only the members of Tagore’s family but for every Indian.

The recommendation made in the report reads as under: -

In Indian philosophy, the place and status of a Guru is higher than those of a God and Rabindranath Tagore is regarded as Gurudev by whole Indian and Jyotirindranath and his wife Kadambari Devi are not only inspiration but Guru of Gurudev. Hence it will be a great tribute for Gurudev to declare a place having unique architecture design and only of Jharkhand, associated to his Guru for about 14 years, the Tagore hill, as a Protected Monument of National Importance.

10. As mentioned earlier, W.P.(PIL) No. 6360 of 2008 was disposed of on 03.02.2011, directing the petitioner to approach Archeological Survey of India for getting the monument declared as the monument of national importance.

11. The letter dated 12.07.2013 written by the Superintending Archaeologist, Archeological Survey of India, Ranchi Circle addressed to the Director (Monuments), Archeological Survey of India, Janpath New Delhi establishes that the Department of Art, Culture, Sports and Youth Affairs, Government of Jharkhand has granted ‘No Objection’ vide letter No. 02/Pura-03 Kala 05/2013-384 dated 17.05.2013. The two monuments for which no objection was granted are (1) Brahma Temple, Tagore Hill, Ranchi; and (2) Group of Temples, Haradih, Ranchi. From the aforesaid letters and the documents, it is clear that the Archeological Survey of India and the Government of Jharkhand acknowledges the historical and architectural importance of “*Tagore Hill*” and the structures thereon including the “*Brahmo Mandir*”.

12. Surprisingly in the counter affidavit, sworn by the Superintending Archeologist, Archeological Survey of India, Ranchi Circle, filed on 12.06.2023 in this writ petition by the Archeological Survey of India, have taken a diametrically opposite stand. In paragraph 7 of the said counter affidavit, by

referring to the Act, the respondents have stated that the said Act specifies the definition of “*Ancient Monument*”. As per them, these structures do not come within the definition of “*Ancient Monument*”.

From perusal of paragraphs 7 and 8 of the counter affidavit, we understand that the respondents are harping on the age of the construction, which, according to them, should be not less than 100 years to qualify as “*Ancient Monument*”. They have also taken a stand that the proposal was considered earlier and it was dismissed by the Archaeological Survey of India. They refer to the earlier round of litigation and taking shelter of those litigation, they contend that no relief can be granted to the petitioner. They also brought on record a letter dated 18th January 2008, whereby they rejected the request to declare ‘*Tagore Hill*’ as a monument of National Importance.

13. We have gone through the said letter. We find that the letter mentions that the Director General, Archaeological Survey of India is of the view that the building on this hill does not fulfill the prime criteria laid down under the Ancient Monuments and Archeological Sites and Remains Act, 1958, thus it is not considered for central protection. There is no whisper in the said letter as to which criteria has not been fulfilled to declare ‘*Tagore Hill*’ and the structures thereon, as a monument of national importance. The counter affidavit of Archaeological Survey of India, Ranchi Circle suggests that the Archaeological Survey of India is taking a plea that in the year 1958 (the date of promulgation of the Act), the ‘*Brahmo Mandir*’ and other structures on ‘*Tagore Hill*’ were only 48 years old. As per paragraphs 7 and 8 of the counter affidavit, it is their case that the structure to be declared as ancient monument must be of historical, archaeological for artistic interest and which has been in existence for not less than 100 years.

14. Thus, on conjoint reading of the letter and the counter affidavit, it is clear that the Archaeological Survey of India is contending that the monument should be 100 years old on the date of promulgation of the Ancient Monuments and Archeological Sites and Remains Act, 1958 for declaring the same as national monument, and since the same is not 100 years old, no action can be taken.

15. In this context, to understand the contention of the Archaeological Survey of India, it is necessary to refer to some of the provisions of the Act itself.

16. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 was promulgated on 28th August, 1958 to provide for preservation of

ancient and historical monuments and archaeological sites and remains of national importance.

Section 2 is the definition clause. Section 2 (a) defines “*ancient monument*” which reads as under: -

2. Definitions. – In this Act, unless the context otherwise requires, -

(a) “ancient monument” means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes-

(i) the remains of an ancient monument,

(ii) the site of an ancient monument,

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(iv) the means of access to, and convenient inspection of, and ancient monument;

Section 2(j) defines “protected monument”, which reads as under:-

(j) “protected monument” means an ancient monument which is declared to be national importance by or under this Act;

From the aforesaid two definitions, it is clear that “*ancient monuments*” gets the status of a “*protected monument*”, after a declaration to that effect is issued under the Act that the same is of national importance. Only after such declaration, “*ancient monument*” is treated to be a “*protected monument*”.

Sections 3 and 4-A of the Act deals with “*Ancient Monuments*” and “*Archaeological Sites*” and “*Remains*” of national importance, whereas Sections 5 to 18 of the Act deals with “*Protected Monuments*”

As per Section 3 of the Act, certain ancient monuments etc. are deemed to be of national importance. The ancient monuments, which will be covered under Section 3, are the monuments, which have already been declared as of national importance by virtue of the previous legislations like Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951) or by Section 126 of the States Reorganisation Act, 1956 (37 of 1956).

Section 4 of the Act gives power to the Central Government to declare an “*ancient monument*” to be of national importance. It is necessary to quote Section 4 of the Act, which reads as under: -

4. Power of Central Government to declare ancient monuments, etc., to be of national importance. – (1) Where the Central Government is of opinion that any ancient monument or archaeological site and remains not included in Section 3 is of national importance, it may, by notification in the Official Gazette, give two months’ notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance; and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification, object to the declaration of the monument, or the archaeological site and remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument or the archaeological site and remains, as the case may be, to be of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or archaeological site and remains to which it relates is of national importance for the purposes of this Act.

17. By virtue of sub section (1) of Section 4 of the Act, a power is vested with the Central Government to declare an “*ancient monument*” (which is not included in Section 3 of the Act) to be of national importance.. The procedure to be followed, thereafter, is incorporated in sub section (1) of Section 4 of the Act. Sub section (4) of Section 4 of the Act also gives power to the Central Government to withdraw any such notification declaring an “*ancient monument*” as a monument of national importance.

Nowhere in these provisions, i.e., Section 4 or Section 2 read with Section 2(a) of the Act provides that an “*ancient monument*” should be of more than 100 years old from the date of promulgation of the Act. Further, Section 4 and the definition of “*ancient monument*” if read conjointly, will clarify that any structure or monument, which qualifies to be an “*ancient monument*” and is

more than 100 years old, can be declared to be of national importance by the Central Government. This period of 100 years cannot be treated to be the period prior to promulgation of the Act. The Act does not provides for such interpretation. What has to be seen is that the structure, on the date of issuance of notification under Section 4 of the Act, should be 100 years old or more and the structure is of historical, archaeological or artistic interest.

18. From the earlier paragraphs of this judgment, wherein the history and the nature of "*Brahmo Mandir*" has been dealt with, along with the counter affidavit and Form 'B' filed in earlier round of litigation by the Archaeological Survey of India, we find that the ground for rejection by the Archaeological Survey of India, that the structure was not 100 years old and it does not qualify to be an "*ancient monument*", is not correct.

From the literature, reference of which has been given in the earlier paragraphs of the judgment, it is clear that as on date, the structure "*Brahmo Mandir*" and other structures are more than 100 years old. From form 'B' also [filed by Archaeological Survey of India in W.P.(PIL) No. 6360 of 2008], it emanates that the "*Brahmo Mandir*" is a monument of historical, archaeological or artistic interest. Thus, we feel that the Archaeological Survey of India needs to reconsider their decision on the issue of declaring the "*Tagore Hill Structures*" like "*Brahmo Mandir*", "*Shanti Dham*" "*Kusumtal*" etc. as "*Ancient Monuments*". We sincerely hope that considering the importance of the structure, the building and the importance of the Tagore Hill, the Archaeological Survey of India will reconsider their decision to declare the "*Tagore Hill*" and the structures thereon as "*Ancient Monuments*" to be of national importance.

19. Now, the next question, which falls for consideration is about maintenance, repair and renovation of the Tagore Hill itself and the structures thereon including the "*Brahmo Mandir*", "*Kusumtal*", "*Samadhisthal*" and "*Shanti Dham*".

20. The Hon'ble Supreme Court in the case of ***Rajeev Mankotia versus Secretary to the President of India***, reported in **(1997) 10 SCC 441** in paragraph 6 thereof, has held that the monument, which is of national importance or state importance shall be protected, preserved and maintained as national monument or state monument. These monuments not only gives pride to the people but also gives us insight into the past glory of our structure, culture, sculptural, artistic or archaeological significance, artistic skills and the vision and wisdom of our ancestors. It is also held by the Supreme Court that

preservation and protection of ancient monuments, is the duty of the Union of India and the State Governments concerned. It is necessary to quote paragraph 6 of the aforesaid judgment, which reads as under: -

“6. It would, therefore, be manifest that all ancient and historical monuments and all archaeological sites and remains or any structure, erection or monument or any tumulus or place of interment shall be deemed to be ancient and historical monument or archaeological sites and remains of national importance and shall be so declared for the purpose of Ancient Monuments Act if they have existed for a century; and in the case of a State monument, of State importance covered by the appropriate State Act. The point of reference to these provisions is that an ancient monument is of historical, cultural or archaeological or sculptural or monolithic or artistic interest existing for a century and is of national importance or of State importance. In other words, either of them are required and shall be protected, preserved and maintained as national monuments or State monuments for the basis which not only gives pride to the people but also gives us insight into the past glory of our structure, culture, sculptural, artistic or archaeological significance, artistic skills and the vision and wisdom of our ancestors, which should be preserved and perpetuated so that our succeeding generations learn the skills of our ancestors and our traditions, culture and civilization. They would have the advantage to learn our art, architecture, aesthetic tastes imbibed by the authors of the past and to continue the same tradition for the posterity. Preservation and protection of ancient monuments, is thus the duty of the Union of India and the State Governments concerned in respect of ancient monuments of national importance or those of State importance respectively to protect, preserve and maintain them by preserving or restoring them to their original conditions.”

21. The Hon'ble Supreme Court of India in the case of ***Archaeological Survey of India versus Narender Anand, (2012) 2 SCC 562*** at paragraph 7 thereof has held as under: -

“7. The Framers of the Constitution were very much conscious of the need of protecting the monuments and places / objects of artistic and historic importance. This is why Article 49 was incorporated in the directive principles of State policy (Part IV of the Constitution) whereby an obligation has been imposed on the State to protect every

monument or place or object of artistic or historic interest declared by or under law made by Parliament. For the sake of reference Article 49 is reproduced below:

“49. Protection of monuments and places and objects of national importance. – It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.”

22. In the case of *Rajeev Mankotia (supra)*, the Hon'ble Supreme Court has held that the monuments of national or State importance, must be maintained, preserved and restored.

The word “repair and renovation” is defined in Section 2(m) of the Act. The word ‘re-construction’ is defined in Section 2(k) and the word ‘maintain’ has been defined in Section 2(f) of the Act, which read as under: -

2. Definitions.

(m) “repair and renovation” means alterations to a pre-existing structure or building, but shall not include construction or re-construction;

(k) “re-construction” means any erection of a structure or building to its pre-existing structure, having the same horizontal and vertical limits;

(f) “maintain”, with its grammatical variations and cognate expressions, includes the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of preserving a protected monument or of securing convenient access thereto;

23. The ‘*Tagore Hill*’ and the structures thereon including “*Brahmo Mandir*” is definitely of State importance. The Government of Jharkhand also acknowledges the same. It is evident from the counter affidavit filed by the State that they have admitted at paragraph 15 thereof that they are taking all endeavors to protect, restore and preserve the “*Brahmo Mandir*” and other structures from further dilapidation at the Tagore Hill by including cleanliness and stopping unauthorized construction at the Tagore Hill. Further, it has been stated at paragraph 16 that the Directorate of Culture, Department of Tourism, Art, Culture, Sports & Youth Affairs, Government of Jharkhand has prepared DPR for conservation and development of *Brahm Sthal (Brahmo Mandir)* situated at Tagore Hill, Ranchi and the proposal was approved by the

Archaeological Survey of India also. At paragraph 23, the State-respondents have categorically stated that they are committed to protect and preserve the Tagore Hill as per law. The State-respondents have, thus, admitted that they are duty bound to maintain, protect and preserve the entire Tagore Hill and the structures thereon, including "*Brahmo Mandir*", "*Kusumtal*" (below the *Kusum Tree*), "*Shanti Dham*" and the "*Samadhisthal*".

24. During course of arguments, it was argued that "*Brahmo Mandir*" is in a very bad shape and is crumbling day by day. Some portions have fallen from the construction. Further several newspaper cuttings have been brought on record to suggest that the very demography of Tagore Hill is being changed by encroachment and also by cutting and digging part of the Hills. Copy of the newspaper cuttings and the photographs published in the newspapers also suggest that the structure is crumbling. During course of argument, members of the Bar also admitted the aforesaid facts and submitted that this structure is an important monument so far as the State is concerned. Be it noted that the State has also submitted that they are taking steps to preserve, protect and maintain the structure.

25. These submissions suggest that the State is not shying away or denying to preserve, protect and maintain "*Tagore Hill*" and the structures on it, but we feel what is being done is not adequate. The affidavit of the State also suggests there are large scale encroachments. In opinion of this Court, these encroachments are also a threat on the very existence of "*Tagore Hill*" and are obstacles in preserving the same. The "*Tagore Hill*" and the structures thereon, which are prima facie, 100 years old and is directly related to the family of Gurudev Rabindranath Tagore, needs to be protected, preserved and maintained for all times to come. Thus, to achieve this purpose, we give the following directions to the State Government for compliance, so that the "*Tagore Hill*" and the structures thereon, namely, "*Brahmo Mandir*", "*Kusumtal*", "*Shanti Dham*" and the "*Samadhisthal*" are preserved, protected and maintained on regular basis in future:-

- (i) The State Government, through its appropriate agency / Department is directed to immediately initiate measures to preserve and restore "*Brahmo Mandir*" which is on the summit of the "*Tagore Hill*" that includes restoring the structure by maintaining its originality;
- (ii) The State Government shall take up the preservation / restoration work of "*Shanti Dham*" which is there on the

“Tagore Hill” premises and shall also ensure the structural safety and security thereof;

(iii) The State Government shall take up development of pathways and staircase which leads to the structures of *“Tagore Hill”* including the path leading to *“Brahmo Mandir”*, *“Shanti Dham”* *“Kusumtal”* and *“Samadhisthal”*.

(iv) Proper lighting arrangement should be effectively made to enhance the beauty and safety of the places and also to ensure safety of the commuters visiting in the evening hours;

(v) Adequate numbers of hygienic washrooms, for males, females, transgender and differently abled persons should be constructed at convenient places for the commuters/visitors, keeping in mind that construction of the same should not in any way be in detriment to the existing structures like *“Brahmo Mandir”*, *“Kusumtal”*, *“Shanti Dham”* and *“Samadhisthal”* nor obstruct the existence of the same;

(vi) Arrangements should be made to keep these toilets/washrooms clean and hygienic;

(vii) Arrangements should be made for pure drinking water at different points to facilitate the visitors;

(viii) Sitting arrangements like benches etc. should be provided for the visitors and the existing sitting arrangements should be renovated and made functional;

(ix) The existing temporary sheds should also be renovated and refixed;

(x) Adequate waste disposal bins should be placed across the premises for disposal of biodegradable, non-biodegradable, food, liquid and dry wastes;

(xi) Arrangement should be made to declare and make the entire *“Tagore Hill”* and the premises within as plastic free zone;

(xii) Proper signboards should be fixed at different places to guide the villagers and to let the visitors know the historical and cultural importance and significance of *“Tagore Hill”* and the structures thereon.

- (xiii) Efforts should be taken to maintain hygiene in the present canteen;
- (xiv) Steps should be taken to remove all encroachments and illegal constructions from the entire "*Tagore Hill*";
- (xv) A Committee should be constituted by the Land and Revenue Department of the State to measure the boundaries of the entire "*Tagore Hill*", (which should consist amongst others survey knowing Amins and should be headed by a responsible Officer of the State to be nominated by the Deputy Commissioner, Ranchi); The Committee should ensure proper demarcation of the boundaries and restore the same to its original in accordance with the original revenue records;
- (xvi) Steps should be taken to remove all the encroachments in accordance with law so that boundaries of the "*Tagore Hill*" as per the original revenue records are restored;
- (xvii) The Department concerned of the State of Jharkhand should ensure regular maintenance and upkeep of the "*Tagore Hill*" and the structures thereon;
- (xviii) The Department concerned of the State of Jharkhand should conduct periodic review of the monument "*Tagore Hill*" and the structures thereon so that necessary remedial steps are taken to ensure its regular maintenance and upkeep;
- (xix) Portion of the *Tagore Hill* where there is no construction, should be beautified, on amongst others, by making plantation etc. and should be maintained properly;
- (xx) If it is found that any part of the Hill is losing its shape or structure due to soil erosion, rock fall etc., State Government should take steps to protect that part of the Hill from such erosion, rock fall.

26. Present generation is only the custodian of the art, culture and heritage of the land, which they inherit from their previous generation not only for the purpose of basking in its glory, but also to preserve them and hand them over to the next generation. We hold these art, culture and heritage as a trustee and it is our duty to preserve and maintain the same and pass it on to

our future generation. Future generation will not forgive us if we destroy these, which we have inherited. So, all efforts must be taken to preserve our heritage, art and culture so that our future generations feel proud about their past.

27. We sincerely hope that the directions, which have been given in this order will be implemented and the State-respondents and Archaeological Survey of India will start taking positive steps for its implementation within a period of one month from today.

28. Further, the Archaeological Survey of India will take appropriate decision in terms of what has been held at paragraph 18 within a period of three months.

29. This Writ Petition in the nature of Public Interest Litigation is, accordingly, disposed of with the aforesaid observations and directions.

30. There shall be no orders as to costs. Urgent certified copies of this order shall be issued as per the Rules.

31. Let a copy of this order be handed over to the learned Additional Advocate General and the learned A.S.G.I. for onward communication to the concerned so as to ensure compliance of this order.

(Ananda Sen, J.)

Sanjaya Kumar Mishra, C.J. – I agree.

(Sanjaya Kumar Mishra, C.J.)