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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
19.06.2023	27.06.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.32163 OF 2022

B.Manoharan

.. Petitioner

- Vs -

1. The Ministry of Culture
Rep. by its Secretary
Government of India
New Delhi.
**(R-1 impleaded suo motu vide order
Dated 9.2.23 in WP 32163/2022)**
2. The Director General of Archaeology
Archaeological Survey of India
Dharohar Bhavan, 24, Tilak Marg
New Delhi 110 001.
3. The Superintending Archaeologist
Archaeological Survey of India
Secretariat, Fort St. George
Chennai 600 009.
4. National Monument Authority
Ministry of Culture



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No.24, Tilak Marg, Bhagwan Das Lane
Mandi House, New Delhi 110 001.

5. Regional Director (South) ASI &
Competent Authority
National Monument Authority
Fort St. George, Chennai 600 009.
**(RR-4 & impleaded suo motu vide order
Order dated 9.2.23 in WMP 696/2023
In WP No.32163/2022)**

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Declaration to declare that the Tomb of David Yale and Joseph Hymners situated in the compound of Law College within the Madras High Court campus is not an ancient monument and consequently direct the respondents to remove/relocate the same from the existing place to any other place nearby within the time fixed by this Hon'ble Court.

For Petitioner : Mr. S.Sivashanmugam

For Respondents : Mr. R.Rajesh Vivekananthan, Dy. SG

ORDER

The tomb of David Yale and Joseph Hymners, the son and friend of Elihu Yale, the then Governor of East India Company, situated within the compound of the Law College within the campus of the High Court, is sought



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to be removed, by filing the present petition premising the case that the said tomb has no archaeological value and does not fall within the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, (for short 'the Act').

2. It is the case of the petitioner that the High Court of Madras is one of the three chartered High Courts established in the three Presidency Towns of Madras, Bombay and Calcutta during the British colonial rule by virtue of the Letters Patent granted by Queen Victoria dated 26.6.1862. In view of the said power granted, the High Court exercises original jurisdiction over the City of Chennai as well as extraordinary original jurisdiction, civil and criminal appellate jurisdiction over the entire State of Tamil Nadu and Union Territory of Pondicherry. The Court was constructed and handed over on 12.7.1982. Within the sprawling High Court complex covering about 107 acres, there functions the City Civil Courts, Small Causes Courts, various Tribunals, etc. and the footfall daily within the court complex, comprising of litigants, court staff and other ministerial staff, advocate, Government Officials, Police, etc.



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congests the place, as the law college building also falls within the Court complex.

3. It is the further case of the petitioner that inspite of the huge extent of land, there is no designated parking space for the advocates, staff, litigants, Government Officials, etc. and the disorganisation in parking is being addressed by the High Court administration, which has come out with a plan for conversion of the old law college building into court halls and also to construct a multi-level parking lot in the available open space.

4. It is the further averment of the petitioner that during the early 1700, when the city was under the rule of the East India Company, a Guava garden was situated next to the Fort, which was used as a burial ground and a Church was constructed there and over a period of time, the cemetery had extended upto the present law college. All the cemeteries were razed down to make the wall for Fort St. George after the attack by the French during the year 1758, barring two monuments, which were left standing, one of which is of Yale Obelisk, beneath which rest Ellhu Yale's son, David and his close friend



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Joseph Hymners. Alongside the said tomb is a circular vault enclosed with railing which contains the remains of six members of the Powney family.

5. It is the further averment of the petitioner that as on date, only two cemeteries and obelisks alone survive and inspite of the ravages of time, the same are left undemolished. Elihu Yale, the then Governor of the East India Company was relieved of his post and prior to his relief, he had constructed the two cemeteries, which are still standing there. It is the further averment of the petitioner that the two Yale Obelisks and a circular vault were declared the Tomb of David Yale and Joseph Hymners as one of “*protected monuments*”. The respondents have declared the aforesaid obelisks and tomb as ancient monuments on account of Section 2(j) of the Act merely on account of its existence for more than 100 years. The said obelisks does not call within the criteria of an ancient monument, which has historical, archaeological or artistic significance or interest. At best the said tomb could be described as one containing the remains of persons, who were close to the then former Governor.



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6. It is the further averment of the petitioner that the tomb has no historical importance attached and Archaeological Survey of India (for short 'ASI') has mechanically declared the same as one of the 19 protected monuments in the city. It is the further averment of the petitioner that the High Court is taking steps for creation of a car parking facility in the old law college buildings adjacent to the High Court campus and due to the presence of the tomb, the said project could not be implemented. Since no construction activity could be carried within 100 mtrs., of the tomb, the development activity initiated by the High Court is set at naught due to ASI declaring the tomb as a protected monument under the Act.

7. In the absence of any historical, archaeological or artistic interest in the tomb, merely because the tomb has been in existence for more than 100 years, the tomb has been declared as a protected monument, which is not the intent of Section 2 (j) of the Act. It is the further averment of the petitioner that though the protection of monuments and places and object of national importance as provided for under Article 49 of the Constitution, are to be preserved, the larger question of public necessity has to be taken into



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consideration when the protection granted to the structure is not covered by Section 2 (j) of the Act.

8. It is the further averment of the petitioner that within 100 mtrs., of the tomb, permission has been granted for the construction of Metro Railway Station, which clearly shows the dual stand adopted by the respondent while granting exemption. It is the further averment of the petitioner that though representation has been given for removal or in the alternative for relocation of the tomb to another place, if the respondents really feel that the structure has archaeological significance, no response has been forthcoming from the respondents and, therefore, left with no alternative, the present petition has been filed for a Declaration as aforesaid.

9. Learned counsel appearing for the petitioner submits that “*protected monument*” is defined u/s 2 (j) of the Act and it pertains to any ancient monument, which is declared to be of national importance. Section 3 of the Act prescribes the monuments, which could be said to be of national



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importance and specifically only such of those monuments, which are ancient and has historical importance.

10. It is the further submission of the learned counsel that Section 2 (a) defines "*ancient monument*" and the present tomb, which is declared to be a protected monument does not fulfil any of the parameters contained under Section 2 (a) and merely because the said tomb has been in existence for a period of more than one hundred years, erroneously, the respondents have declared the tomb as a protected monument.

11. Learned counsel appearing for the petitioner further submits that the tomb herein not only does not satisfy the relevant criteria prescribed under Section 2 (a) of the Act, but lands abutting the said tomb have been given for the purpose of formation of Metro Rail and that being the case, Metro Rail being in the larger interest of the public, equally, the land in which the tomb exists is required for the purpose of High Court, which is to be used for the purpose of creation of a parking facility and the said developmental activity cannot be restricted merely because the tomb is declared to be a



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protected monument though it does not fulfil any of the requirements of an ancient monument as prescribed u/s 2 (a) of the Act but it has been in existence for more than one hundred years. Therefore, necessarily in the interest of the public at large and also considering the inflow of litigants, advocates, staff and other members of the public and officials, the said tomb has to be removed to pave way for further developmental activity and the representation given in this regard has still not seen the light of the day and, therefore necessarily appropriate direction has to be issued by this Court.

12. Learned counsel appearing for the petitioner, in support of his submissions, placed reliance on the decision of the Apex Court in ***K.Guruprasad Rao – VS – State of Karnataka & Ors. (2013 (8) SCC 418)***.

13. Per contra, learned Deputy Solicitor General appearing for the respondents submitted that the representation of the petitioner was considered and rejected by the respondents vide order dated 16.6.2023. Pointing out from the order of rejection, it is the submission of the learned Deputy Solicitor General that the tomb was declared as a protected



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monument in 1921 u/s 3 of the Ancient Monuments Preservation Act, 1904, which, after independence, was carried over as a protected monument under Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951.

14. After the enactment of Ancient Monuments and Archaeological Sites and Remains Act, 1958, the monuments, which were covered under Act, 1951 were deemed to be of national importance and recognized as protected monuments were recognised as such under Section 3 of Act, 1958. It is therefore the submission of the learned Deputy Solicitor General that the tomb is covered by the Act and it is the duty of the respondents to preserve the said tomb as provided for under Article 49 of the Constitution of India. Accordingly, the rejection order has been passed on the said premise and, therefore, learned Deputy Solicitor General prays that the present writ petition may be dismissed.

15. Replying to the aforesaid submissions, learned counsel for the petitioner submitted that the archaeological, historical and artistic value of



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the monument is the determining factor for declaring the monument as a protected monument. However, in the case on hand, the monument has neither archaeological nor historical value and there is no artistic value attached to the said tomb and that being the case, the continuance of the declaration of the tomb as a protected structure is against the provisions of the Act. It is the further submission of the learned counsel that when a structure has no archaeological or historical value, it has to pave the way for developmental activities.

16. This Court gave its anxious and careful consideration to the submissions advanced by the learned counsel on either side and perused the relevant provisions of law to which this Court's attention was drawn as also the decision relied on behalf of the petitioner.

17. The pivotal question that arises for consideration in the present petition is –

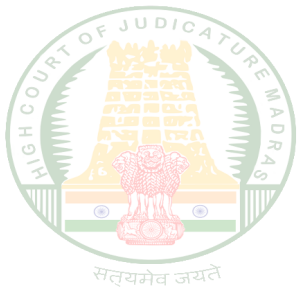
*“Whether the Tomb of David Yale and Joseph Hynmer
would fall within the meaning of ancient monument u/s 2*



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(a) and would get the status of protected monument u/s 2 (j) of the Act so as to be declared as an ancient monument of national importance.”

18. This Court is conscious of the fact that developmental necessity cannot rob the archaeological value of a structure, which has been declared as a protected monument. Mere developmental necessity should not shield the eyes of this Court when a particular monument is archaeologically important. However, to maintain a monument as one of archaeological importance, the relevant yardsticks, which have been mandated in the provisions of the Act requires to be satisfied so as to approve the stand of the respondents that the present monument has archaeological value and is of historical importance. Therefore, for deciding the aforesaid question that has fallen for consideration, it is necessary to have a glimpse of sub-sections (a) and (j) of Section 2 and Section 3 of the Act.



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(a) and (j) therein defines “*ancient monument*” and “*protected monument*”

and the same are quoted hereunder for better appreciation :-

“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 of 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;

* * * * *

(j) “protected monument” means any archaeological site and remains which is declared to be national importance by or under this Act;”



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20. Sub-section (a) to Section 2 spells out that such of those structures, inscriptions, place of interment, rock-sculpture, cave, etc., which is of historical, archaeological or artistic interest and which has been in existence of not less than one hundred years would be construed to be an ancient monument and such of those monuments would fall within the purview of protected monument under sub-section (j) of Section 2.

21. Section 3 pertains to the prescription of certain monuments as deemed to be of national importance and the said provision is quoted hereunder :-

“3. Certain ancient monuments, etc., deemed to be of national importance.- All ancient and historical monuments and all archaeological sites and remains which have been declared by the 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), to be of national importance shall be deemed to be ancient and historical monument or archaeological sites and remains declared to be of national importance for the purposes of this Act.”



WEB COPY 22. A careful perusal of Section 3 of the Act clearly shows that such of those monuments, which are ancient and historical monuments and archaeological sites, deemed to be ancient and historical monument or archaeological sites and remains shall be deemed to be of national importance.

23. Reading Section 3 along with Section 2 (a) and (j), it is evident that such of those structures, erection, sculpture, inscription, place of interment, etc., which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years could be declared as a monument of national importance.

24. From the above provision of law, it transpires that two conditions have to be fulfilled for an ancient structure to be branded as an ancient monument of national importance and to be declared as a protected structure of archaeological importance. The first of the condition is that the structures, erection, sculpture, inscription, place of interment, etc., should be of historical, archaeological or artistic interest and secondly that the said



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structure, erection, sculpture, inscription, place of interment, etc., should have been in existence for not less than one hundred years. Without satisfying the twin conditions, the said ancient structure cannot be declared as a structure of national importance to be treated as a protected monument.

25. In this background, the history of the monument assumes greater significance so as to find out whether the said monument fulfils the twin criteria.

26. There is no dispute about the fact that the tomb was built by Elihu Yale who was the Governor of Madras from 1687 to 1692. The said tomb was built by Elihu Yale in memory of his son, David Yale and his friend Joseph Hynmer. A brief history of the monument is available in the rejection report filed on behalf of ASI and for ready reference, the relevant portion is extracted hereunder :-

“The monument – Tomb of David Yale and Joseph Hynmer was built by Elihu Yale, Governor of Madras from 1687 to 1692 in the memory of his friend Joseph Hynmer and his young son Jacca David Yale. David Elihu Yale was a younger son of Elihu Yale. He was born to Elihu Yale and Catherine (widower



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of Joseph Hynmer) in 1684. Catherine was married to Elihu Yale after demise of her first husband Joseph Hynmer, who was a good friend of Elihu Yale and senior member in council of Fort St. George, died in 1680 and buried here. Elihu Yale was the founder of famous Yale University.”

27. From the above, it is evident that it is the place of interment of David Yale and Joseph Hynmer, which was built between 1684 and 1688 on the demise of David Yale, who was buried beside Joseph Hynmer in the said place and that the said structure is more than 100 years.

28. In this regard, this Court, vide its order dated 12.04.2023 had called upon the respondents to spell out the historical and archaeological value and also the artistic interest which is ingrained in the said monument, for it to be brought within the definition of a protected monument of archaeological importance. Pursuant to the said order, the present order dated 16.6.2023, rejecting the representation of the petitioner, has come to be passed.

29. This Court, in clear terms, vide its order dated 12.4.2023, had called upon the respondents to spell out the archaeological value of the tomb. To



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appreciate the stand of the respondents, with reference to the archaeological value of the tomb, the relevant portion of the “speaking order” which has been passed by the respondents require to be adverted to and the relevant portion of the said order is quoted hereunder :-

“The monument – Tomb of David Yale and Joseph Hynmer was built by Elihu Yale, Governor of Madras from 1687 to 1692 in the memory of his friend Joseph Hynmer and his young son Jacca David Yale. David Elihu Yale was a younger son of Elihu Yale. He was born to Elihu Yale and Catherine (widower of Joseph Hynmer) in 1684. Catherine was married to Elihu Yale after demise of her first husband Joseph Hynmer, who was a good friend of Elihu Yale and senior member in council of Fort St. George, died in 1680 and buried here. Elihu Yale was the founder of famous Yale University.”

The tomb consists of an obelisk built over a chamber. The either sides of the wall of chamber hold stone tablets of David Elihu Yale and Joseph Hymner. The tomb is built of brick-and-lime mortar. The superstructure has risen in five levels to get a tapering shape. Each of the four top corners of the chamber is holding stone balls.

This tomb was declared as protected monument in 1921. vide notification No.34 dated 20.01.1921 under Section 3 of the Ancient Monuments Preservation Act, 1904. After India’s independence, the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National



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Importance) Act, 1951, gives status of National importance to this monument.

Further, as per the section 3 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, all these monuments covered under Act of 1951 deemed to be of national importance under Ancient Monuments and Archaeological Sites and Remains Act, 1958.

As such, the said monument is now covered under the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

Further, the Article 49 of the Constitution of India specifies that 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."

(Emphasis Supplied)

30. Even from a cursory perusal of the aforesaid order, it is evident that taking umbrage under the definitions under the Act, the monument, which has been declared as a protected monument in the year 1921 during the British regime, when India was under the clutches of the British rule, had been carried over as a protected monument under Act, 1951 as also under Act,



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1958. Only on the aforesaid basis, the present order rejecting the representation of the petitioner has come to be passed.

31. It is to be pointed out that the tomb, holding the interment of David Yale and Joseph Hynmer has been declared as a protected monument in the year 1921, even though it was alleged to have been built way back in the year 1684-1688. Of necessity, it is to be pointed out that the said structure, even at the time when it was declared as a protected monument was more than two centuries old. But never ever the British regime thought to declare the said monument as a protected monument till 1921.

32. The tomb has been declared as a protected monument in the year 1921 on the ground that the tomb is more than 100 years old. However, of necessity, the life of the tomb of more than 100 years has to be read in conjunction with the historical, archaeological value and artistic value attached to the tomb. However, there is nothing in the order of the respondents to bolster their claim that the monument is of national importance as it satisfies the pre-requisites of historical, archaeological and



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artistic value and that the monument has been in existence for more than 100 years.

33. Even the order of the respondents detail the nature of construction of the tomb, which is a normal construction without any artistic value. The photograph of the tomb, which is attached with the typed set of documents, which is not disputed by the respondents clearly reveal that it is a normal construction with no artistic value. No historical or archaeological value attached to the monument has been shown specified in the order of the respondents.

34. Merely because the tomb has been in existence for more than 100 years, that alone cannot be a ground to declare the monument as a protected monument, thereby bringing it under the cover of ancient monument as provided for under Section 2 (a) of the Act. Even according to the respondents, the monument is a mere cemetery and only on the pretext that it contains the interments of the son of the then Governor of the East India



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Company, the same has been brought within the ambit of protected monument only to satisfy the thirst of the East India Company.

35. So long as there is no historical or archaeological value and artistic value attached to the said tomb, the mere fact that the tomb has been in existence for more than 100 years cannot prevail upon the respondents to declare the monument as a protected monument, merely because during the British regime, the said monument was declared as a protected monument under Act, 1904.

36. The authoritarian attitude of the respondents is writ large in the speaking order issued by the respondents rejecting the representation of the petitioner. Rather than speaking about the historical and archaeological value of the tomb, the respondents have merely placed their claim on the fact that the tomb, even pre-independence, was declared as a protected monument under Act, 1904 and, therefore, it would partake the character of a protected monument under Act, 1951 and follow suit in Act, 1958 as well.



WEB COPY 37. If such is the construction given by the respondents to the historical and archaeological value of a monument is accepted, then it would only lead to an anomalous situation, where, all constructions, which have withstood the onslaughts of the weather and other climatic changes and have been in existence for more than 100 years ought to be declared as a protected monument under the Act.

38. Further, the respondents have totally lost sight of the other provisions of the Act, which has clothed on the authority the duties and responsibilities that have to be carried out so as to carry on the tag that a monument has historical and archaeological value and is entitled to the continuance of the declaration as a protected monument.

39. Section 20-F of the Act speaks about the constitution of National Monuments Authority, which shall include a Chairperson and such number of members, not exceeding five whole-time members and five part-time members who shall have the necessary expertise in the field of archaeology,



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country and town planning, architecture, heritage and conservation – architecture or law.

40. The functions and powers of the Authority are provided for u/s 20-I, which include making recommendations to the Central Government for grading and classifying protected monuments and protected areas declared as of national importance u/s 3 and 4 of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, prior to and after the commencement of the aforesaid Act.

41. Section 35 of the Act provides power to the Central Government to denotify any ancient monument, which has ceased to be of national importance, which had hitherto fore been declared as an ancient or historical monument or archaeological site. For exercising the power u/s 35, necessarily the Authority ought to exercise its powers u/s 20-I by making necessary recommendations to the Central government for grading and classifying protected monuments and protected areas declared as of national importance u/s 3 and 4 of the Ancient Monuments and Archaeological Sites and Remains



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(Amendment and Validation) Act, 2010, prior to and after the commencement of the aforesaid Act. However, as stated above, even a cursory perusal of the order dated 16.6.2023 reveals that no such exercise had been undertaken by the Authority u/s 20-I, but merely the declaration of the tomb as a protected monument in 1921 u/s 3 of the Act, 1904 had been carried on under the Act, 1951 and Act, 1958.

42. It is to be pointed out that the formation of the Authority is not for a matter of formality, but for the purpose of discharging the duties and functions in a proper manner as envisaged under the Act. Sub-section (e) to Section 20-I clearly mandates the authority *to consider the impact of large-scale developmental projects including public project and projects essential to the public which may be proposed in the regulated areas and make recommendations in respect thereof to the competent authority.* Therefore, necessarily, it is for the Authority to look into all the archaeological and historical structures, which have been declared as protected monuments, time and again, keeping in mind its archaeological and historical value vis-a-vis the developmental projects which are in the interest of the public and make



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recommendations to the competent authority, so that the Central Government may invoke its powers u/s 35 of the Act. However, since 1921, when the British regime had declared the tomb, which is the subject matter herein, as a protected monument, no worthwhile steps have been taken by the Authority to find out the historical or archaeological value or the artistic value attached to the tomb so as to retain the tomb as an ancient monument and a protected monument under the relevant provisions of the Act.

43. An order passed by the British regime in the year 1921 has been allowed to continue for more than a century, unmindful of its monument's value archaeologically or historically. Merely because the British rulers, then, had passed an order declaring the tomb as a protected monument, upon Independence, it is not necessary that independent India should continue what the British regime had thought fit to do then. May be, the slavery attitude, which marked the colonial era during the British regime, has not faded from the memory of the authority, which is evident from the fact that no application of mind had gone into the representation given by the petitioner for the removal and relocation of the tomb, by citing the fact that



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the said tomb has no historical or archaeological value and it also does not have any artistic value attached to it.

44. As stated above, for a monument to be declared as a protected monument, in addition to the structure being in existence for more than 100 years, the said structure should have historical or archaeological value or artistic value so as to safeguard it as a protected monument u/s 2 (j) of the Act. In the case on hand, but for the monument built in the year 1684-1688, which is more than three centuries old, there is no historical or archaeological value or artistic value attached to it. Further, the tomb also does not carry the interment of any person, who had such historical significance based on his contribution to the society so as to preserve the said tomb as a protected monument.

45. The pendulum swings either way. When the British ruler imposed upon us a tomb, merely holding interment of the son of the then Governor of the British East India Company along with the interment of the former husband of the Governor's wife, just on account of the fact that the tomb was



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built three centuries ago and holding some interment, would not clothe it with any archaeological or historical value to protect the said tomb till date, more so when the place is required for developmental activities to be carried on in the interest of the public at large.

46. It is not for this Court to speak out all the aforesaid aspects, but it is for the Authority, u/s 20-I of the Act to have revisited the protected monument and made appropriate recommendations to the Central Government, so that the Central Government could have acted on the aforesaid recommendation, by which the tomb, which has been put in issue as a protected monument, would have ceased to exist as a protected monument. However, no such exercise seem to have been undertaken by the Authority u/s 20-I of the Act. In fact, the order of the respondents also does not speak about any such act being undertaken by the Authority at regular intervals.

47. When a particular provision is provided for in a statute, it is only for a particular reason and to achieve a particular purpose. However, Section 20-I has been made available in the statute but has been made to appear as if it is



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for the purpose of its availability rather than for its enforceability. This clearly shows that citizens of India, who form part of the Authority still feel the blood of slaves in their body, which prevents them from taking any action on any act, which had been imposed upon us during the British regime.

48. When the Authority is constituted for discharging the purposes under the Act, it is the duty of the Authority to act in consonance with the provisions of the Act. The representation of the petitioner had been brushed aside as not feasible of compliance, holding that it finds the approval of the competent authority. But without any iota of rhyme or reason, the authority seems to have given its seal of approval, thereby, the act of the authority has come to be discharged as an empty act, which has been perpetrated by the respondents without resorting to the provisions of the Act. Had the competent authority been appraised of the actual value of the tomb, necessarily, a second thought would have entered the approval granting process. However, the basis on which the approval has been issued by the competent authority is not placed before this Court.



WEB COPY 49. As stated supra, though this Court had called upon the respondents to spell out the archaeological value of the tomb vide its order dated 12.4.2023, however, the order of the respondents is silent as to the archaeological value and merely quoting that the tomb had been in existence for more than 100 years and that it had been declared as a protected monument as early as in the year 1921, which has been carried over on the basis of the subsequent enactments, the declaration is sought to be maintained.

50. It is the duty of the Authority to apply its mind individually to each and every historical or archaeological remains to decide to retain its position as a protected monument or an ancient monument. Merely carrying its protection irrespective of the fact that it has archaeological or historical or artistic value is a clear indication of abdication of duty and power vested on the authority, which clearly makes the authority an entity on paper.

51. The authority has to first divest its slavish mindset carried on from the colonial era which alone would mark the attainment of independence by



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our country. Independence on paper without it reflecting in the mind of the individuals is a clear aberration from what the freedom fighters had in mind, while they fought for independence. This Court, even for a second is not ridiculing the superstructures put up by the East India Company as having no archaeological value, as the High Court premises stands testimony for the artistic and historical value of the buildings put up during the said period. But that cannot be the basis to bring all the buildings constructed during the said period within the ambit of an architectural marvel having artistic and historical value as such interpretation would be against the tenets of the statutory provisions of the Act, when there is a clear prescription that in line with the developmental needs of the public at large, it is necessary for the Authority to make appropriate recommendations to the Central Government.

52. Therefore, it is the duty of the respondents to have revisited the monuments, which were declared as protected monuments having historical or archaeological value in line with its duty under sub-section (e) of Section 20-I. But with a heavy heart, this Court is constrained to record that the present act of the respondents clearly show that without resorting to the



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duties prescribed by the statute, the Authority has shirked their responsibility imposed on them by the statute by not properly discharging their duties.

53. In the aforesaid background, as evidenced by the discussion above, the structure has neither archaeological value or historical importance and is neither an artistic masterpiece for it to be maintained as a protected monument and in such a scenario, the developmental activities necessitated in the current day scenario cannot be brushed aside for merely housing the cemetery of individuals, who have no historical significance, but for being the son of the then Governor of the East India Company. Necessarily the said tomb has to pave the way for the development of parking space, which is the need of the hour.

54. From the discussion aforesaid, this Court is of the considered opinion that not only the respondents have not discharged their responsibility as provided for under the Act, but the present order, in and by which the tomb, which is held to be a protected monument does not satisfy the requirements provided for u/s 2 (a) and 2 (j) r/w Section 3 of the Act and,



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therefore, necessarily, not only the order passed by the respondents deserve to be set aside, but as a consequence thereof, necessary orders have to be passed for relocating the tomb, which is put in issue in the present petition. In view of the aforesaid discussion, necessarily this Court has to answer the question framed in the negative against the respondents, as the said tomb does not fulfil the requirements as provided for u/s 2 (a) and (j) r/w Section 3 of the Act.

55. Accordingly, for the reasons aforesaid, this writ petition is allowed by setting aside the communication dated 9.6.2023 of the respondents to the petitioner and also the consequential order dated 16.6.2023 passed by the respondents in and by which the tomb has been held to be a protected monument, as the same does not satisfy the requirements of protected monument under Sections 2 (a) and (j) r/w Section 3 of the Act. In view of the above, the respondents are directed to take steps to relocate the tomb to any appropriate place, which they deem fit and proper, within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.



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27.06.2023

Index : Yes / No

GLN

Note to Office : Issue Today



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To

1. The Secretary
Government of India
Ministry of Culture
New Delhi.
2. The Director General of Archaeology
Archaeological Survey of India
Dharohar Bhavan, 24, Tilak Marg
New Delhi 110 001.
3. The Superintending Archaeologist
Archaeological Survey of India
Secretariat, Fort St. George
Chennai 600 009.
4. National Monument Authority
Ministry of Culture
No.24, Tilak Marg, Bhagwan Das Lane
Mandi House, New Delhi 110 001.
5. Regional Director (South) ASI &
Competent Authority
National Monument Authority
Fort St. George, Chennai 600 009.



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VERDICTUM.IN



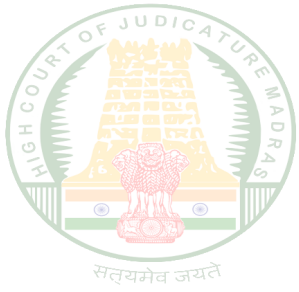
W.P. No.32163/2022

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.32163 OF 2022**

**Pronounced on
27.06.2023**



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W.P. NO. 32163 OF 2022

M.DHANDAPANI, J.

This matter is listed today under the caption “For Being Mentioned” at the instance of the learned counsel for the petitioner.

2. Learned counsel appearing for the petitioner submits that in para-12 of the order dated 27.6.2023, this Court had mentioned that the judgment in ***K.Guruprasad Rao – Vs – State of Karnataka & Ors. (2013 (8) SCC 418)*** as having been relied on by the petitioner, though it was relied on by the respondents. Therefore, necessary correction may be made in the said order and fresh order copy may be directed to be issued.

3. A perusal of the order dated 27.6.2023, more particularly, para 12 therein reveals that inadvertently, the said judgment has been shown as relied on by the petitioner, though it was relied on by the respondents. In the aforesaid circumstances, para-12 and 13 of the order dated 27.6.2023 shall stand modified in the following terms :-



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“12. Placing strong reliance on the decision of the Apex Court in ***K.Guruprasad Rao – Vs – State of Karnataka & Ors. (2013 (8) SCC 418)***, learned Deputy Solicitor General appearing for the respondents couched his entire arguments based on the orders passed by the respondents.

13. Learned Deputy Solicitor General appearing for the respondents submitted that the representation of the petitioner was considered and rejected by the respondents vide order dated 16.6.2023. Pointing out from the order of rejection, it is the submission of the learned Deputy Solicitor General that the tomb was declared as a protected monument in 1921 u/s 3 of the Ancient Monuments Preservation Act, 1904, which, after independence, was carried over as a protected monument under Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951. “



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4. Registry is directed to carry out the necessary corrections in the order dated 27.06.2023 and issue fresh order copy to the parties.

05.07.2023

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VERDICTUM.IN



W.P. No.32163/2022

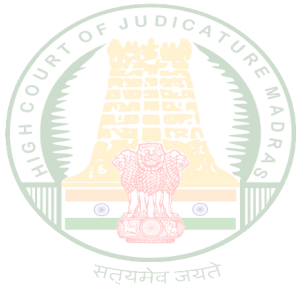
M.DHANDAPANI

J.

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W.P. NO.32163 OF

2022



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W.P. No.32163/2022

05.07.2023