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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28.01.2025

+ LPA 126/2024

NBCC (INDIA) LIMITED

.....Appellant

Through: Ms. Aishwarya Bhati, ASG with Mr. Anil K Airi, Senior Advocate with Mr. Ravi Kumar, Mr. Mudit Ruhella, Mr. Sayuk Kumar, Ms. Sadhana Sharma, Mr. Malyaj Sehgal and Ms. Shivika, Advocates with Mr. Nishant Pandit, AR.

versus

AMAN LEKHI & ORS.

.....Respondents

Through: Ms. Manali Singhal, R-3 in person.
Ms. Zubeda Bega, Standing Counsel with Mr. Tushar Sannu, ASC and Ms. Vanessa Singh, Advocate for NDMC.
Mr. Arjun Pant, Advocate for DDA with Ms. Latika Malhotra, Panel Counsel.
Mr. Kapil Dutta and Mr. Vansh Luthra, Advocates for MCD.
Ms. Arunima Dwivedi, CGSC with Mr. Balendu Shekhar, CGSC with Mr. Pinky Pawar, Advocate for R-5 and R-16.
Mr. Pushkar Sood and Mr. Rahul B.,



Advocates for R-9.

Ms. Sangeeta Bharti, Standing Counsel for DJB with Ms. Manya Sharma and Ms. Atika Chaturvedi, Advocates for R-18.

Mr. Amit Singh Chauhan and Mr. Syed Hamza G., Advocates for Monitoring Committee.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present appeal under Clause X of the Letters Patent Appeal preferred by the NBCC (India) Limited seeks to assail the order dated 21.12.2023 passed by the learned Single Judge in W.P.(C) No.3263/2014. Vide the impugned order, the appellant's application being CM APPL.53719/2022 seeking correction of a purported factual error in the judgment dated 11.02.2021, wherein it had been recorded that the Dariya Khan Tomb was located in an area of 14 acres, has been dismissed by the learned Single Judge.

2. In support of the appeal, learned senior counsel for the appellant submits that when the decision dated 11.02.2021 was rendered, the appellant itself was unaware that the area of Dariya Khan Tomb was only 1.25 acres as against 14 acres recorded in the said decision. However, when documents including copies of the notification issued as far back as in October, 1925 showing that the actual area of Dariya Khan Tomb was only 1.25 acres, came to its knowledge, the appellant approached the learned Single Judge,



by way of an application seeking correction of the aforesaid factual error *qua* the area of Dariya Khan Tomb and also prayed for consequential modification of directions issued in the judgment dated 11.02.2021.

3. He submits that the learned Single Judge has, however, dismissed the said application by granting liberty to the appellant to approach the Archaeological Survey of India ('ASI') by observing that in case the appellant is of the opinion that the area required to be declared as prohibited area under Section 20A of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 *qua* the Dariya Khan Tomb, was in fact less than 14 acres, it was open for the appellant to approach the ASI for proper determination thereof. This observation of the learned Single Judge, he contends clearly shows that the learned Single Judge was also conscious of the fact that the grievance of the appellant was that there was a factual error in the recording of the area of Dariya Khan Tomb. The learned Single Judge, however, instead of taking cognizance of the documents filed alongwith the application which would have clearly showed that the area of Dariya Khan Tomb i.e. the protected area was only 1.25 acres, has left the appellant to again approach the ASI. He, therefore, prays that the impugned order be set aside by clarifying that the protected area of the Dariya Khan Tomb was only 1.25 acres.

4. The appeal, we may note, is opposed only by respondent nos. 1 to 4, who were the original petitioners before the learned Single Judge. The respondent no. 3, who appears in person, and is also representing the interest of respondent no. 1, 2 and 4, seeks dismissal of the appeal by contending that even if the plea of the appellant that the protected area of the Dariya



Khan Tomb was 1.25 acres were to be accepted, the fact remains that the prohibited area encircling the protected area was running into 14 acres. Similarly, the regulated area which was encircling the prohibited area was running into 72 acres and therefore, the appellant cannot be permitted to carry out any additional commercial activities in either the prohibited area or the regulated area.

5. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the relevant extracts of the decision dated 21.12.2023, which reads as under:

“7. This Court has, therefore, already considered and held that the area which in terms of Section 20A of the Act is prohibited area, could not have been counted for the purposes of FAR and consequently, for the purposes of the permissible commercial area. This application, in effect, seeks a review of the said judgment, which cannot be allowed in the grab of a modification. The review application would also be hopelessly barred by limitation.

8. In case, the applicant is of the opinion that the area excluded due to Section 20A of the Act is less than 14 acres, it can always approach the ASI for a proper determination thereof.”

6. From the aforesaid, what appears is that the learned Single Judge has, while rejecting the appellant’s application, granted them liberty to approach the ASI to seek proper determination of the protected area qua the Dariya Khan Tomb. We, however, find from the record that the respondent no. 1 to 4 have themselves, by way of Annexure R-4 to their reply to the present



appeal, filed a copy of the communication dated 14.06.2022 from Land & Development Office, Ministry of Urban Development, Government of India, from which itself it transpires that the protected area of the Dariya Khan Tomb, as urged by the appellant, is 1.25 acres. In these circumstances, when the correct factual position was already before the learned Single Judge and was not even seriously disputed by the respondents 1 to 4, we are of the considered opinion that the learned Single Judge, instead of relegating the appellant to the ASI, ought to have himself issued the necessary clarification in respect of the prohibited area pertaining to the Dariya Khan Tomb.

7. Having said so, we are of the view that the learned counsel for the respondents is correct in urging that even if it were to be clarified that the protected area of the Dariya Khan Tomb was only 1.25 acres, the appellant would not be automatically entitled to carry out any further construction/commercial activities in the prohibited area or the regulated area outside the Dariya Khan Tomb. For this purpose, we may note that it is the common case of the parties that the protected area of the Dariya Khan Tomb is surrounded by a prohibited area in the nature of a circular belt with a radius of 100 meters and the regulated area being a circular belt with a radius of further 200 meters. We are, therefore, of the opinion that no directions can be issued by this Court regarding the appellant's prayer for carrying out additional construction for which purpose the appellant should approach the Competent Statutory Authorities.

8. We, accordingly, dispose of the appeal by clarifying that the protected area of the Dariya Khan Tomb would be treated as 1.25 acres, making it clear that this would not amount to permitting the appellant to carry out any



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further construction/commercial activities without seeking appropriate orders from the Competent Statutory Authorities.

9. The appeal is, accordingly, disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

JANUARY 28, 2025

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