

Paramount Studio and ors. Vs. the Union of India (Uoi) and ors.

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Court : Allahabad

Decided On : Nov-11-1980

Reported in : AIR1981All186

Judge : T.S. Misra and ;V.K. Khanna, JJ.

Acts : [Ancient Monuments and Archaeological Sites and Remains Act, 1958](#) - Sections 2 and 38; Ancient Monuments and Archaeological Sites and Remains Rules, 1959 - Rule 8

Appeal No. : Civil Misc. Writ Petn. No. 248 of 1973

Appellant : Paramount Studio and ors.

Respondent : The Union of India (Uoi) and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R.N. Bhalla and ;S.N. Kacker, Advs.

Disposition : Petition dismissed

Judgement :

Misra, J.

1. This petition under Article 226 of the Constitution of India raises a dispute pertaining to carrying on business of taking photographs of persons visiting Tai

Mahal and Forts at Agra and Fatehpur Sikri. These three monuments are indeed ancient monuments of historical importance. Tai Mahal is considered to be one of the wonders of the world and attracts visitors from abroad also. Before we set out the facts giving rise to the dispute, we may state here the submission made at the bar but not taken specifically in the pleadings of the petitioners to the effect that Tai Mahal and the aforesaid forts at Agra and Fatehpur Sikri are not protected monuments. We mention this submission made on behalf of the petitioners only to be rejected. These monuments have a history behind them and are known for their superb architecture and beautiful carvings. Besides, they yield revenue to the Government and also earn foreign exchange. Indisputably, they fall within the definition of the term 'ancient monument' as given in Section 2(a) of the Ancient Monuments and Archaeological Sites and Remains Act, 1956 (hereinafter called 'the Act'). They are also covered by the definition of the term 'protected monument' as given in Section 2 (j) of the Act. Even Sub-section (2) of Section 39 makes them ancient monuments and protected monuments because as pointed out earlier they are of national importance.

2. The petitioners claim to be doing photographers' business for the last several years at Agra. They claim high professional skill and wide business including that of photographing visitors and tourists within the premises of Tai Mahal and other historical monuments at Agra and Fatehpur Sikri. According to the petitioners there was no restriction of any kind on their aforesaid business till the year 1963. However, during the middle of that year, the petitioners were obstructed in their profession and business by the superintendent, Archaeological Survey of India, Northern Circle, Agra, and they objected to the same. Ultimately Writ Petn. No. 2158 of 1966. *Bhim Singh v. Union of India*, was filed by some of the petitioners in this Court. That Writ Petition, it is alleged, was withdrawn as not Dressed because a compromise was entered into between the petitioners of that petition and the respondents. However, subsequently the Director General of Archaeological Survey of India informed the petitioners that he had decided to introduce a system of licence for permitting the photographers to take the photos of visitors who visit Tai Mahal, Agra, and therefore issued a general notice to grant licences on certain terms and conditions. The pro forma of the terms and conditions for issue of licence along with the agreement is Annexure I to this writ petition. The petitioners

have contended that the terms and conditions set out in Annexure I were all illegal and without authority and tantamount to infringement of their right to carry on their business as guaranteed by Article 19(1)(g) of the Constitution of India. They say that respondent No. 3 had made up his mind to take the test of the petitioners within a week. Hence if the test was taken temporary licences granted to the petitioners will come to an end and they would be put to irreparable injury. They also say that the demand for payment of Rs. 1,000/- per annum for doing business of photography at Tai Mahal and Rs. 1,000/- per annum at other historical monuments while granting licences is illegal. The petitioners have, therefore, challenged the validity of Rule 8 (d) framed under the Act and have prayed for a writ in the nature of mandamus commanding the opposite parties not to prohibit or obstructs the petitioners-photographers from photographing their clients or visitors against the back ground of Tai Mahal, Agra or within the precincts of the other monuments and also for a writ in the nature of certiorari to quash the amended Rule 8 (d) a copy of which is Annexure-2 to this writ petition. A writ to quash the levy of so-called licence fee of Rs. 1,000/- per annum per photographer has also been prayed.

3. The petition has been opposed and a counter-affidavit has been filed by the Superintending Archaeologist, Archaeological Survey of India, Northern Circle, Agra, respondent No. 3 to the present writ petition.

4. In order to appreciate the contentions raised by the petitioners it would be appropriate to refer to the relevant, provisions of the [Ancient Monuments and Archaeological Sites and Remains Act, 1958](#), and the rules framed there under. Section 2 (a) of the Act defines 'ancient monument' as 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. It also includes the remains of an ancient monument and the site thereof. It was not in dispute that Tai Mahal and the Forts at Agra and Fatehpur Sikri have been in existence for more than 100 years. They, therefore, fall within the definition of 'ancient monument'. The 'protected monument' as defined in Section 2 (j) means an ancient monument which is declared to be of national importance by or under this

Act. Section 3 of the Act says that 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, to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purposes of this Act. Section 19 deals with the restrictions on enjoyment of property rights in protected area. It provides, inter alia, that no person, including the owner or occupier of a protected area, shall construct any building within the protected area, or utilise such area or any part thereof in any other manner without the permission of the Central Government. 'Protected area' means, as defined in Section 2 (i) of the Act, any archaeological site and remains which are declared to be of national importance by or under this Act. By virtue of Section 3 the archaeological sites and remains of the monuments in question would also fall within the definition of 'protected area'. Section 38 gives powers to the Central Government to make rules for carrying out the purposes of the Act. Rules can, therefore, be made with respect to the right of access of the public to a protected monument and the fee, if any, to be charged there for as also the form in which an application for permission under Section 18 or Section 24 may be made and the particulars which such application shall contain vide Sub-section (2) (c) and (e) of Section 39. In exercise of the power under Section 38 of the Act the Central Government has made rules known as the Ancient Monuments and Archaeological Sites and Remains Rules, 1959. Rule 2 (b) defines 'copying' as follows:--

' 'Copying', together with its grammatical variation and cognate expressions, means the preparation of copies by drawing or by photography or by mould or by squeezing and includes the preparation of a cinematographic film with the aid of a hand-camera which is capable of taking films of not more than eight millimeters and which does not require the use of a stand or involve any special previous arrangement.' Rule 2 (c) defines 'filming' as follows:--

'Filming, together with its grammatical variations and cognate expressions, means the preparation of a cinematographic film with the aid of a camera which is capable of taking films of more than eight millimeters and which requires the use

of a stand or involves other special previous arrangements'.

5. Rule 6 provides that no person above the age of fifteen years shall enter any protected monument or part thereof specified in the second Schedule except on payment of a fee of fifty naye paise provided that the Director General may, by order, direct that, on such occasions and for such periods as may be specified in the order, no fee shall be charged for entry into a protected monument or part thereof.

6. Rule 7 prohibits holding of meetings, reception parties, conferences or entertainment except under and in accordance with a permission in writing granted by the Central Government.

7. Rule 8 prohibits certain acts within the precincts of the monuments. It reads as follows;

'No person shall, within a protected monument:--

(a) do any act which causes or is likely to cause damage or injury to any part of the monument; or

(b) discharge any fire-arms; or

(c) cook or consume food except in areas, if any, permitted to be used for that purpose; or

(d) hawk or sell any goods or wares or canvass any custom for such goods or wares or display any advertisement in any form or show a visitor round for monetary consideration, except under the authority of or under and in accordance with the conditions of a licence granted by an archaeological officer; or

(e) beg for alms or

(f) violate any practice, usage or custom applicable to or observed in the monument; or

(g) bring, for any purpose other than the maintenance of the monument.

(i) any animal, or

(ii) any vehicle except in areas reserved for the parking thereof.'

8. Clause (d) of Rule 8 was subsequently substituted, vide notification dated 16th February, 1971, as follows:--

'(d) hawk or sell any goods or wares or canvass any custom for such goods or wares or display any advertisement in any form or show a visitor round or take his photograph for monetary consideration, except under the authority of or under, and in accordance with the conditions of a licence granted by an Archaeological Officer; or

9. At Item No. 24 in the Schedule appended to the rules, Agra Fort, and at Item No. 26 thereof, Tai Mahal, have been mentioned. Thus no person above the age of fifteen years would be entitled to enter Tai Mahal or the Fort at Agra except on payment of a fee of fifty naye paise and by reason of Rules 7 and 8 no person is entitled to use any part of the protected monuments aforesaid for the purpose of holding any meetings, receptions, parties, conferences etc. or do any act which may cause any damage or injury to any part of the monument or cook or consume any food except in the area earmarked for that purpose or hawk or sell any goods or wares or canvass any custom for such goods or wares or display any advertisement in any form or show a visitor round or take his photograph for monetary consideration except under the authority, of, or under, and in accordance with the conditions of a licence granted by an Archaeological Officer. The petitioners being engaged in the business of photography felt aggrieved by the provisions of Clause (d) of Rule 8 which prohibits them from taking photographs of any visitor for monetary consideration except under the authority of or in accordance with licence granted for that purpose. Their contention is, to put it briefly, that the provision enumerated in Rule 8 (d) is invalid inasmuch as it is not authorised by any provision of the Act including Section 38 thereof They further contend that admittedly the opposite-parties do not provide any benefit or any facility to the licence holders. The charge of Rs. 1,000/- per annum for Tai Mahal and Rs. 1,000/- per annum for the Forts as licence fee ,is illegal. They say that Section 18 of the Act gives them right of access to any portion of the monument on

payment of a nominal fee of fifty naye paise and their right to carry on business or profession of photography within the precincts of the monuments cannot be curtailed, interfered with or checked in any manner by asking them to appear at the test and to pay a huge amount of Rs. 1,000/-per annum as licence fee. We shall proceed to examine these contentions in the light of the provisions of the Act and the rules.

10. We have held above that these monuments are ancient monuments of historical and national importance and are protected monuments. Any person can have access to these monuments subject to the rules framed in that behalf. Section 18 confers this right on a visitor. Section 18 however does not say that any person who may have access to the monuments on payment of the nominal charges of fifty naye paise shall have a right to use any portion of the monument, either covered or uncovered by structure, in any manner he likes. The monument is to be protected and preserved. Visitors from various parts of this country as also from foreign countries come to Agra to have a view of Tai Mahal and the Fort. They also visit the Fort at Fatehpur Sikri. The primary object of their visit obviously is to appreciate its architecture and art and the history which it contains. Such a monument cannot be permitted to be spoiled; that is the obvious object of the Act and the rules framed thereunder and that is why Clause (c) of Sub-section (2) of Section 38 lays down that a rule may be framed with respect to the right of access of the public to a protected monument and the fee, if any, to be charged therefor. Even a protected area of the monument cannot be utilised in an uncontrolled manner. Holding of meetings, receptions, parties conferences, entertainments, display of fire-arms etc. within the precincts of the said monuments are, therefore, prohibited. The rules also prohibit the hawking or selling of any goods or wares etc. within the precincts of any of these monuments. The petitioners contend that in the course of their business of photography they had been taking photographs of visitors within the precincts of the monuments in question for monetary considerations. The visitors obviously need expert service in this behalf lest their photographs get spoiled due to inefficiency of the photographer. We find that the provisions of Clause (d) of Rule 8 are in conformity with the object of the Act and they have been made with the purpose of regulating the access of the visitors to the monuments and the use of the precincts of the monuments by those visitors.

No person can claim as of right that he shall carry on business at a place which is not owned by him or acquired by him or for which he does not have the requisite permission. The rule in question not only regulates the actual entry in the precincts of the monuments but also controls the user of the monument. The Act and the rules in question raise the citizens' sense of responsibility in protecting and maintaining these monuments of national importance in their original form. This sense of responsibility develops to a real factor of social life which exerts its impact on official policy. The principal task, therefore, is to raise the safety measures and to provide safety regulation for protecting and maintaining the monuments including their compound. The provision in the impugned rule seems to be based upon ethic principle of responsibility. It is a duty of every citizen to protect monuments of national importance in their original form. Hence special and personal factors pertaining to the photographers, if left unregulated or uncontrolled may lead them under the prevailing conditions to take irresponsible decisions for violation of that duty. So in order to avoid threats and hazards which may emerge in the different situations precautionary and safety regulations have been provided for by granting licenses subject to certain conditions. Adherence to those conditions guarantees that foreseeable hazards do not arise. Society by elaborating and introducing these legal provisions accepts responsibility that every thing necessary is done to guide the citizens by way of law to move about within the precincts of the monuments as also in their compound in a careful considerable and safe manner. The licence holders are also charged for any situation with easily fulfilled obligations which they can adhere to without any difficulty. Protection and maintenance of the monument like Tai Mahal and Forts at Agra, Fatehpur Sikri and Delhi as well as rational use thereof are typical tasks in our country. Starting from this position the legal provisions had to be created and the methods of legal regulation had to be determined. The law stipulates the rights, duties and responsibilities of all those persons who secure licence to do a particular business or profession within the precincts of the monuments in question. We hold the view that the legal provisions in question for the protection of the monuments have contributed towards more effectively increasing the role of law in the administration and organization of the social relations in this sphere. They ensure rational utilization of the monuments by the enterprises, organs and

citizens. The legal objective is to ensure that citizens, public authorities and professionals meet their legal duties with greater seriousness and consciousness in order to take into account the demands for protecting these monuments. The contention of the petitioners that Rule 8 (d) is ultra vires of the Act is therefore, merit less and is accordingly rejected.

11. It has been provided in Rule 8 (d) that no person shall take photographs for monetary consideration except under the authority of or in accordance with the conditions of the licence granted by the Archaeological Officer. The Officer invites applications from photographers, takes interview, selects competent photographers and permits them to take photograph of visitors for monetary consideration, grants licences to those persons subject to certain terms and conditions which are incorporated in the form of agreement. The licensee enters into an agreement with the licensor solemnly undertaking to abide by the terms contained therein. It is open to him not to accept a licence subject to the conditions enumerated in the agreement and may not, therefore, carry on the business of taking photographs of visitors for monetary consideration within the precincts of the monuments. But if he accepts the licence subject to the conditions enumerated in the agreement which in our view are reasonable and fair, he is bound by those terms. The money which is charged from the licensee is not in fact the licence fee but, is a consideration for the grant of the right to use the precincts for the purpose of carrying on the business of taking photographs of visitors for consideration.

12. To contend that no test should be made for selecting competent persons is to ask for allowing even those persons to do the job who do not know how to handle a camera. Persons from far off places and even from foreign countries visiting Taj Mahal and the Forts do like to have their photographs taken in the background of the monument with a view to preserve the memory. They pay for the photograph and desire that it should last long. Only efficient and competent photographers can meet their demand. Such persons who do not have the requisite qualification cannot, therefore, be allowed to hold a licence. Rule 8 (d) cannot, therefore, be declared to be invalid on the ground that the Archaeological Officer requires the applicants to undergo a test.

13. For the reasons in the foregoing we find no merit in the petition which is accordingly dismissed with costs.

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