SAKKUBAI ETC. ETC. A

v.

STATE OF KARNATAKA & ORS. ETC. ETC.

(Civil Appeal Nos. 1443-1456 of 2020)

FEBRUARY 11, 2020 B

[MOHAN M. SHANTANAGOUDAR AND R. SUBHASH REDDY, JJ.]

Mysore Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 – ss. 19(1) & 19(3) – 1988 notification declaring Virupapura Gaddi as 'protected areas' u/s. 19(3) of the Act, 1961 – Validity of – Held: The Archaeological Survey of India (ASI) had highlighted the archaeological importance of Virupapura Gaddi in its Statement of objections filed before the High Court – From the observations made by the ASI, a specialised body responsible for archaeological research and conservation of cultural monuments in India, there remains little doubt as to the historical importance of Virupapura Gaddi – The Government had considered the comprehensive geographical entity of the area, including attributes like its landscape, prehistoric vestiges and water systems – Thus, the 1988 notification issued u/s. 19(3) of the 1961 Act declaring Virupapura Gaddi as a 'protected area' cannot be said to be without basis – Further, s. 19(4) of the 1961 Act clarifies that the notification issued u/s. 19(3) conclusively establishes the status of Virupapura Gaddi as a protected area under the said Act. C D E

Mysore Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 – s.20(1) – Validity of construction raised by the appellants under the 1961 Act – Held: The entire area comprising Virupapura Gaddi, where constructions were raised by the appellants, had been declared as protected area vide the 1988 notification, it follows that land owned by the Appellants could have only been used for the purpose of cultivation after issuance of such notification – However, the appellants had constructed huts and buildings on their lands for the commercial purpose of running hotels, restaurants and guest houses – From sub-section (1) of s.20, it is evident that owners/occupiers of protected areas cannot construct any building or utilize such areas in any manner other F G H

A *than cultivation, without the permission of the State Government – These constructions, in the instant case, were in violation of s. 20(1) of the 1961 Act.*

Hampi World Heritage Area Management Authority Act, 2002 – Mysore Ancient and Historical Monuments and Archaeological
B *Sites and Remains Act, 1961 – Hampi World Heritage Area Management Authority (HWHAMA) power to demolish illegal constructions under the 2002 Act – Appellants contended that HWHAMA, which is a body set up under the Hampi Act, could not have issued such orders for demolition as the illegality of the*
C *constructions was rooted in 1961 Act – Held: The State Government enacted a specific legislation for the conservation of the cultural heritage of Hampi, i.e. the Hampi Act – The HWHAMA was constituted under s. 3 thereof – Both the 1961 Act and the Hampi Act cannot be construed as isolated silos – They both seek to fulfil a common object, they must be interpreted in a manner that seeks to*
D *further such objective and not obstruct it – In the instant case, since it is established that the structures erected by the appellants were in violation of the 1961 Act, given the common thread underlying the 1961 Act and the Hampi Act, it cannot be said that such illegality ceased to exist when the Hampi Act came into force –*
E *Thus, the HWHAMA was, and is entitled to proceed against the development raised by the appellants, which had been rendered illegal under the prior legislation i.e. 1961 Act.*

Dismissing the appeals, the Court

HELD: 1. Re: First Issue :

F **Whether the construction raised by the Appellants was lawful under the 1961 Act, in light of the 1988 notification?**

In the instant case, exercising its powers under Section 19(3) of the Mysore Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961, the State
G **Government issued the 1988 notification declaring certain areas specified in the Schedule thereto as protected areas. From a perusal of this Schedule, it is amply clear that "Virupapura Gaddi" had been indicated in Column 5 as a covered area. Further, Map 'A' which is annexed to this Schedule also makes it evident that**

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the entire village of Virupapura Gaddi was included within the boundaries of the protected areas. In fact, the specific Survey Nos. of lands where the Appellants are carrying on their restaurants and guesthouses are also mentioned in this Map. Thus, there is no doubt that the 1988 notification clearly indicates the entire village of Virupapura Gaddi as a protected zone. [Para 13][776-D-F]

2. In the opinion of this Court, the 1961 Act makes two distinct categories for protected monuments (Sections 3 to 18) and protected areas (Section 19 onwards). While the former relates to "ancient monuments", the latter relates to "archaeological site and remains". Upon a close reading of the 1961 Act, this Court finds that there is nothing in the definitions under Sections 2(1) and 2(3) or otherwise under the scheme of the 1961 Act, that indicates a link between the existence of "archaeological site and remains" and "ancient monuments". It cannot be said that the protection ascribed to archaeological site and remains must necessarily depend on the existence of a monument. It is possible for certain *areas* to be protected independent of the existence of *monuments*, if there is a reasonable belief that they contain ruins or relics of historical or archaeological importance [Section 2(3)]. [Para 14.1][776-G-H]

3. From the observations made by the ASI, a specialized body responsible for archaeological research and conservation of cultural monuments in India, there remains little doubt as to the historical importance of Virupapura Gaddi. It appears that the Government had considered the comprehensive geographical entity of the area, including attributes like its landscape, prehistoric vestiges and water systems. Thus, the 1988 notification issued under Section 19(3) of the 1961 Act declaring Virupapura Gaddi as a protected area cannot be said to be without basis. Further, Section 19(4) of the 1961 Act clarifies that the notification issued under Section 19(3) conclusively establishes the status of Virupapura Gaddi as protected area under the said Act. [Para 14.3][779-C-E]

4. From a reading of sub-section (1) of Section 20, it is evident that owners/occupiers of protected areas cannot

construct any building or utilize such areas in any manner *other than cultivation*, without the permission of the State Government. Here, since the entire area comprising Virupapura Gaddi had been declared as protected area vide the 1988 notification, it follows that the land owned by the Appellants could have only been used for the purpose of cultivation after the issuance of such notification. However, as mentioned supra, the Appellants had constructed huts and buildings on their lands for the commercial purpose of running hotels, restaurants, and guest houses. Clearly then, these constructions were in violation of Section 20(1) of the 1961 Act. [Paras 15 and 16][780-B-D]

5. Re: Second Issue:

<u>If not, whether the Hampi World Heritage Area Management Authority (HWHAMA) had authority to demolish the said construction?</u>

There is no merit in the Appellants' argument that Hampi World Heritage Area Management Authority Act, 2002 is purely prospective in nature and that the HWHAMA, which has been established under such Act, cannot enforce prior notifications. In the considered opinion of this Court, the 1961 Act and the Hampi Act cannot be viewed as separate, watertight compartments that operate independent of each other. Such an understanding would not only defeat their underlying common objective, but also belie the events leading up to the enactment of the Hampi Act, all of which clearly reflect that the Hampi Act was a culmination of c*ontinuing* attempts by the State Government to preserve and protect the cultural heritage of Hampi. Therefore, the 1961 Act and the Hampi Act must not be construed as isolated silos. Since they both seek to fulfill a common object, they must be interpreted in a manner that seeks to *further* such objective, and not *obstruct* it. [Para 21][785-C-E]

6. In the present case, since it is established that the structures erected by the Appellants were in violation of the 1961 Act, given the common thread underlying the 1961 Act and the Hampi Act, it cannot be said that such illegality ceased to exist when the Hampi Act came into force. Thus, the HWHAMA was,

and is entitled to proceed against the development raised by the Appellants, which had been rendered illegal under the prior legislation. [Para 22][785-F-G]

7. It may also be useful to appreciate the background in which the HWHAMA had proceeded to take action against the Appellants. As mentioned, the Hampi World Heritage properties had been included in the 'in danger' list by UNESCO in 1999. However, owing to serious efforts by the State Government and the HWHAMA, this classification was dropped in 2006. The threat to the various monuments and the integrity of the landscape of Hampi, however, continued. [Para 23][785-G-H; 786-A]

8. It was in the context of these developments that the HWHAMA had directed the local authorities to not renew the trade licenses issued to the Appellants, and later proceeded to issue notices for demolishing the constructions raised by the Appellants. In view of the broad-ranging functions envisaged for the HWHAMA under Section 11 of the Hampi Act, this Court finds that its actions were lawful, as it was incumbent upon the authority to act and not turn a blind eye to the illegality being perpetrated by the Appellants. [Para 24][786-E-G]

9. In any case, this Court finds that the notification dated 10.07.2008 regarding the implementation of the Master Plan 2021 and the Zonal Regulations fulfils the requirement of Section 14(1) in the present case, as they clearly specify the restrictions as to land use and the prohibited types of development. Thus, the Appellants cannot use the absence of regulation of Virupapura Gaddi as a ground to justify the illegal construction on their land. [Para 25.2][788-B-C]

10. In light of the foregoing discussion, this Court concludes that the construction of rooms, thatched-roof huts, temporary structures, and buildings by the Appellants to carry on the business of hotels, restaurants, or guesthouses in Virupapura Gaddi was in violation of the 1961 Act. Further, it is held that the HWHAMA had the authority to proceed with the demolition of such illegal constructions. Thus, there is no reason to interfere with the impugned final judgment and order dated 27.04.2015 passed by the High Court of Karnataka. [Para 26][788-C-E]

A CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1443-1456 of 2020.

From the Judgment and Order dated 27.04.2015 of the High Court of Karnataka at Bangalore in W.P. Nos. 60278, 60279, 60280, 60304, 60305, 60306, 60307, 60309, 60310, 60311, 60312, 60313, 60314, 60315 of 2011

B With

Civil Appeal Nos. 1457 and 1459 of 2020.

Basava Prabhu Patil, Shekhar Naphade, S. Guru Krishna Kumar, Mallikarjun S. My Lar, P.S. Narasimha, Devadatt Kamat, Sr. Advs., Anand Sanjay M. Nuli, Chinmay Deshpande, Geet Ahuja, K. Malla Rao, C Dharm Singh, Suraj Kaushik, M/s. Nuli & Nuli, Rajesh Mahale, V. Dattar, Ms. S. Lakshmi Iyer, Ms. Aishwarya Dash, Ashok Bannidinni, Mrs. S. Usha Reddy, Raghavendra S. Srivatsa, Ms. Komal Mundhra, Saurabh Agrawal, Ms. Sindhoora VNL, T. V. Ratnam, M. Sowri Dev, H. Chandra Sekhar, Ram Sankar, Ms. Rekha Chandra Sekhar, Karri Venkata Reddy, D V. N. Raghupathy, Aditya Bhat, Md. Apzal Ansari, Ali Asghar Rahim, Manendra Pal Gupta, Advs. for the appearing parties.

The Judgment of the Court was delivered by

MOHAN M. SHANTANAGOUDAR, J.

1. Leave granted.

E 2. The instant appeals arise out of the common final judgment and order dated 27.04.2015 passed by the High Court of Karnataka at Bengaluru in W.P. Nos. 60278, 60279, 60280, 60304-60315 of 2011. Vide the impugned order, the High Court dismissed the writ petitions seeking a direction to the Respondent-authorities to restrain them from demolishing F the restaurants and guest houses run by the writ petitioners in Virupapura Gaddi, Koppal district, Karnataka.

3. The background to this appeal is as follows:

3.1 With the object of ensuring the preservation of ancient monuments and archaeological sites and remains in the erstwhile State G of Mysore, the Mysore Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 (*hereinafter* 'the 1961 Act') was enacted. Under this statute, the State Government was accorded the power to declare certain ancient monuments as 'protected monuments' and certain archaeological sites and remains as 'protected areas'. Accordingly, in exercise of its jurisdiction under Section 19(1) of H the 1961 Act, the State Government issued a (preliminary) notification

on 19.05.1982 for declaration of certain archaeological sites and remains specified in the schedule thereto as 'protected areas'. Subsequently, on 22.10.1988, a (final) notification was issued under Section 19(3) of the 1961 Act declaring ten villages, including Virupapura Gaddi, as 'protected areas' (*hereinafter* 'the 1988 notification'). A

3.2 It is the case of the Appellants that they own land(s) in Virupapura Gaddi, an oval islet formed by the Tungabhadra river, located on the west of the Hampi World Heritage site. The Appellants claim that during the period from 1990-2000, given the increasing number of tourists visiting Virapupura Gaddi, they obtained hotel/restaurant licenses from the village panchayat to cater to the needs of the tourists. In certain instances, they also obtained diversion orders from the local authorities for changing the land use from agricultural to non-agricultural, so that they could run hotels, restaurants, and guest houses in their premises. B C

3.3 However, upon the introduction of the Hampi World Heritage Area Management Authority Act, 2002 (*hereinafter* 'the Hampi Act'), the authority constituted thereunder, the Hampi World Heritage Area Management Authority (*hereinafter* 'HWHAMA'), Respondent No. 4 herein, directed the panchayats and local authorities not to renew any licenses and not to grant permission for commercial activities within Virupapura Gaddi. Later, in exercise of its powers under the Hampi Act, the HWHAMA issued notices to the Appellants for demolishing the structures constructed by them. To restrain them from doing so, the Appellants herein filed writ petitions before the High Court, seeking the identical relief of a direction to HWHAMA to forbear from carrying out such demolition. D E

3.4 Vide the impugned judgment dated 27.04.2015, the High Court of Karnataka dismissed these writ petitions. The High Court found that the 1988 notification declared the entire village of Virupapura Gaddi as protected area. As a result, Section 20(1) of the 1961 Act came into operation, rendering the land there usable for the purposes of cultivation only, unless otherwise approved by the State Government. Thus, given that the writ petitioners had constructed rooms, thatched roof huts, temporary structures, and buildings to carry on the business of hotels, restaurants, or guesthouses in Virupapura Gaddi, it was held that such construction was in violation of the 1961 Act. It was also observed that the panchayats did not have any authority to accord sanction to the building plans, as such power was solely vested with the State Government F G H

A under Section 20(1) of the 1961 Act. Furthermore, it was noted that Virupapura Gaddi fell in the 'core zone' of the heritage area specified under the Hampi Act, and was therefore subject to the authority of the HWHAMA. Hence, in light of the illegality of the constructions under the 1988 notification, the HWHAMA could demolish the structures erected by the Appellants. It is against this common judgment and order
B that the Appellants have come in appeal before this Court.

4. Heard learned Counsel for the parties.

5. Learned Senior Counsel Mr. Shekhar Naphade, representing some of the Appellants, argued that the entire village of Virupapura Gaddi
C cannot be construed as 'protected area' under Section 19 of the 1961 Act. This is because the scope of this provision is limited to archaeological site and remains, and it does contemplate the declaration of entire village(s) as protected area(s). Drawing our attention to the definitions of the terms "ancient monuments" and "archaeological site and remains"
D under Sections 2(1) and 2(3) of the 1961 Act respectively, he submitted that the two terms should be read in conjunction with each other, such that the conception of "archaeological site and remains" cannot be divorced from the existence of "ancient monuments". In light of this, stating that there are no monuments in Virupapura Gaddi, he argued that there could not be any "archaeological remains" as well, for it to be
E declared as 'protected area' under Section 19. Thus, the constructions in question were not hit by the 1988 notification.

In any case, even if the entire village was considered to be 'protected area' under the 1988 notification, he contended that the HWHAMA did not have any authority to demolish the structures raised
F by the Appellants for two reasons – *first*, the HWHAMA was an authority established under the Hampi Act, which is a legislation that is independent of the 1961 Act. Thus, even if the constructions fell foul of Section 20(1) of the 1961 Act on account of the land being used for non-cultivable purpose, Section 20(2), which gives the Deputy Commissioner
G the power to order removal of such construction, should have been resorted to. In the absence of such action by the particular authority envisaged under the 1961 Act, i.e. the Deputy Commissioner, it was contended that the HWHAMA could not have proceeded with the demolition. *Secondly*, it was submitted that since the construction was carried out by the Appellants *prior* to the coming into force of the Hampi
H Act, the HWHAMA could not have acted in relation to them, as its

power to control development in heritage areas under Section 14 is prospective in nature. In any case, such powers could have been exercised only upon the issuance of a notification under Section 14(1), which was not done in the present case. Thus, the Appellants submitted that their businesses were being run legally after obtaining the relevant licenses from the local bodies, and the construction in question was being wrongfully demolished by the HWHAMA.

6. Supporting these contentions, learned Senior Counsels, Mr. Basava Prabhu S. Patil and Mr. Guru Krishna Kumar representing the other Appellants, drew our attention to a challenge to the 1988 notification, which is currently pending before the High Court of Karnataka. In light of this, they prayed that the buildings of the Appellants not be demolished before the final decision is rendered by the High Court. On merits, it was argued that the impugned order was without reasons and proceeded on unsubstantiated assumptions, especially with respect to findings on illegality of conversion orders granted by the local authorities.

7. Per contra, learned Senior Counsel Mr. P.S. Narasimha, appearing for HWHAMA (Respondent No. 4 herein) argued that the entire village of Virupapura Gaddi falls within the 'protected area' declared by the State Government in the 1988 notification. To substantiate the same, he referred us to Column 5 of the Schedule to this notification, and Map 'A' annexed thereto, both of which make it sufficiently clear that the entire village of Virupapura Gaddi is included within the boundaries of the protected area.

Further, he submitted that the scheme of the 1961 Act is such that 'protected areas' constitute a category separate from 'protected monuments'. Therefore, it is possible for certain *areas* to be protected independent of the *existence of monuments*, if there is a reasonable belief that they contain ruins or relics of historical or archaeological importance. In light of this, he drew upon materials indicating the archaeological significance of Virupapura Gaddi, and submitted that the 1988 notification was justifiably made applicable to the entire village. Based on this, he contended that the land in the area could only be used for cultivation purposes as per the proviso to Section 20(1) of the 1961 Act. Since the Appellants were carrying out commercial activities there, the structures raised by them were argued as being in violation of the 1961 Act.

A As regards the jurisdiction of the HWHAMA to direct the demolition of such constructions, learned Senior Counsel argued that even though the HWHAMA is an authority under a *subsequent* legislation, the regimes of the 1961 Act and the Hampi Act should not be viewed as strictly separate compartments. Drawing upon the context in which the Hampi Act was introduced, he submitted that it should not be B seen as being divorced from the 1961 Act, but in *furtherance* of it. To substantiate this, he indicated that the Hampi Act effectively incorporates the 1988 notification issued under the 1961 Act by denoting the protected area declared under the notification as the 'core area zone' under it. Further, he alluded to the current restrictions and prohibitions applicable C to core area zones as well as the Zonal Regulations framed under the Master Plan 2021 to argue that the restrictions on Virupapura Gaddi under the Hampi Act are co-terminus with the restrictions imposed on the area under the 1988 notification. In light of this, it was contended that the regimes under the two statutes should not be treated as silos and D the HWHAMA had the authority to enforce the 1988 notification issued under the 1961 Act.

Lastly, with regards to Section 14 of the Hampi Act, it was submitted that it is only an overarching provision that allows for the issuance of a *further* notification to control development in the heritage E area. In other words, the lack of a notification under Section 14(1) does not render a *prior* notification intended for the same purpose meaningless or unenforceable by the HWHAMA. In fact, in view of the functions delineated for the HWHAMA under Section 11 of the Hampi Act, he argued that the authority was right in proceeding against the illegal constructions as part of its duty to protect property within the heritage F area.

8. The contentions raised by Mr. Narasimha were adopted by learned Senior Counsel, Mr. Devdatt Kamat, representing the Government of Karnataka, Respondent No. 1 herein.

G 9. Upon perusing the material on record and in light of the arguments advanced by the parties, the following issues arise for our consideration in this appeal–

(i) Whether the construction raised by the Appellants was lawful under the 1961 Act, in light of the 1988 notification?

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(ii) If not, whether the HWHAMA had authority to demolish the said constructions?

10. Before we delve into these issues, it would be appropriate to consider the preliminary objection raised by the Appellants with respect to hearing of the instant appeal, in light of a pending challenge to the Hampi Act and the 1988 notification.

10.1 The Hampi Act is said to be under challenge before the High Court. Vide I.A. No. 58525 of 2017 filed in the underlying SLP, the Appellants sought permission to amend the SLP seeking a declaration that the 1988 notification is *ultra vires* the provisions of the Ancient Monuments and Historical Sites and Remains Act, 1958, the 1961 Act, as well as the Hampi Act. While disposing off the said application, this Court observed thus:

> "It may be pertinent to mention here that the petitioners have already filed a writ petition before the Karnataka High Court being Writ Petition Nos. 65940-65949 of 2011 in which the petitioners submit that the Hampi World Heritage Management Authority Act 2002 is arbitrary, illegal, ultra vires and unconstitutional as stated supra. There is conflict of provisions of different Acts viz., Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and Hampi World Heritage Authority Management Act 2002 and also Master plan 2012. Thus, it is necessary to stay the operation of the Hampi World Heritage Authority Management Act, 2002 and Master Plan 2021 pending disposal of the writ petition. If the Act is not stayed, there will be multiplicity of litigations.
>
> As the matter is still pending before the Karnataka High Court, we, therefore, do not find it proper to allow the application for amendment of SLP. It is hereby rejected.
>
> However, if the petitioners want to challenge the said Notification, they may do it either by amending the petition pending before the Karnataka High Court or by filing a fresh petition before the High Court as per law."

10.2 From the above, it is clear that though the petition challenging the Hampi Act was filed in the year 2011, the same has not been pursued

A by the Appellant before the High Court. Be that as it may, nothing has been placed on record by the Appellants to show that operation of the 1988 notification or the Hampi Act has been stayed. In the absence of any such interim order staying the operation of the said notification or the Hampi Act, it is not open for the Appellants to use the same to argue for a deferral of the hearing of the instant appeals till the disposal of W.P. Nos. 65940-65949 of 2011 by the High Court. Accordingly, we reject the prayer made by the Appellants for deferring the matter till the disposal of the writ petitions pending before the High Court.

11. In light of this, we now proceed to examine the issues arising for our consideration in the instant appeals.

Re: First Issue

12. The first issue pertains to the validity of the development undertaken by the Appellants under the 1961 Act. In this context, it would be useful to refer to certain relevant provisions of the Act:

"**Section 2. Definitions.—**

(1) "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, an ancient monument;

but shall not include ancient and historical monuments declared by or under law made by Parliament to be of national importance;

x x x

(3) "archaeological site and remains" means any area which contains or is reasonably believed to contain ruins or relics of historical or archaeological importance which have been in existence for not less than one hundred years, and includes—

(i) such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and

(ii) the means of access to, and convenient inspection of the area;

x x x

(9) "protected area" means any archaeological site and remains which is declared to be protected under this Act;

x x x

Section 4: Power of Government to declare ancient monuments to be protected monuments.—

(1) Where the Government is of opinion that any ancient monument should be declared as a protected monument, it may, by notification in the official Gazette, give two months' notice of its intention to declare such ancient monument to be a protected monument and a copy of every such notification shall be affixed in a conspicuous place near the monument.

(2) Any person interested in any such ancient monument may within two months after the issue of the notification, object to the declaration of the monument to be a protected monument.

(3) On the expiry of the said period of two months, the Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette the ancient monument to be a protected monument.

(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 to which it relates is a protected monument for the purposes of this Act.

x x x

Section 19: Power of Government to declare archaeological site and remains to be protected area.—

(1) Where the Government is of opinion that any archaeological site and remains should be declared as a protected area, it may, by notification in the Official Gazette, give two months' notice of its intention to declare such archaeological site and remains to be

A a protected area, and a copy of every such notification shall be affixed in a conspicuous place near the site and remains.

(2) Any person interested in any such archaeological site and remains may, within two months after the issue of the notification, object to the declaration of the archaeological site and remains to
B be protected area.

(3) On the expiry of the said period of two months, the Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the archaeological site and remains to be a protected area.

C (4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the archaeological site and remains to which it relates is a protected area for the purposes of this Act."

13. In the instant case, exercising its powers under Section 19(3)
D of the 1961 Act, the State Government issued the 1988 notification declaring certain areas specified in the Schedule thereto as protected areas. From a perusal of this Schedule, it is amply clear that "Virupapura Gaddi" had been indicated in Column 5 as a covered area. Further, Map 'A' which is annexed to this Schedule also makes it evident that the
E entire village of Virupapura Gaddi was included within the boundaries of the protected areas. In fact, the specific Survey Nos. of lands where the Appellants are carrying on their restaurants and guesthouses are also mentioned in this Map. Thus, there is no doubt that the 1988 notification clearly indicates the entire village of Virupapura Gaddi as a protected zone.

F 14. As to whether the entire village *could* be declared as protected area by the 1988 notification, we do not find merit in the Appellants' argument that a notification under Section 19 of the 1961 Act only contemplates protection for archaeological site and remains that are linked to the existence of monuments.

G 14.1 In our opinion, the 1961 Act makes two distinct categories for protected monuments (*see* Sections 3 to 18) and protected areas (*see* Section 19 onwards). While the former relates to "ancient monuments", the latter relates to "archaeological site and remains". Upon a close reading of the 1961 Act, we find that there is nothing in the
H definitions under Sections 2(1) and 2(3) or otherwise under the scheme

of the 1961 Act, that indicates a link between the existence of "archaeological site and remains" and "ancient monuments". It cannot be said that the protection ascribed to archaeological site and remains must necessarily depend on the existence of a monument. It is possible for certain *areas* to be protected independent of the existence of *monuments*, if there is a reasonable belief that they contain ruins or relics of historical or archaeological importance [*see* Section 2(3) supra].

14.2 In light of this, when we look to the village of Virupapura Gaddi specifically, there appears to be sufficient material to establish its archaeological significance. The Archaeological Survey of India (ASI), Respondent No.5 herein, has in fact highlighted the archaeological importance of Virupapura Gaddi in its Statement of Objections filed before the High Court as under:

"**2. <u>LOCATION OF VIRUPAPURA GUDDA AND ITS IMPORTANCE</u>**

x x x

2.1 Virupapura Gudda is an oval islet formed by the river Tungahbhadra flowing towards the northern perimeter of Hampi World Heritage site. The river flowing in east-west direction has many small islets of which the above is the largest measuring nearly 2,600 mtrs east-west and 1,300 mtrs north-south. The islet in the centre throughout its east-west length is characterized by undulated low hillock of granite and the highest altitude is 1,570 feet. The southern, western and northern part is put to cultivation.

x x x

3. <u>Important Archaeological remains close to Virupapura Gadda</u>

1. Sri Virupaksha Temple and the Hampi ruins: This is in Regulated zone and 200 mtrs; from the south eastern extreme of Virupapuragadda to the fort wall to the north of Virupaksha Temple complex.

2. Kodandarama Temple: This is in Regulated zone and 165.68 mtrs from State protected; from the south eastern extreme of Virupapuragadda to the Temple.

3. Varaha Temple: This is centrally protected monument and 249.00 mtrs; from the south eastern extreme of Virupapuragadda to the Temple.

4. Koti Linga: This is a State protected monument and 190.58 mtrs from the southern extreme of Virupapuragadda to the parent rock formation where the Kotilinga is situated.

5. Western fort wall – Vithala Temple Complex: This is centrally protected monument and 229.40 mtrs from Regulated zone to the island.

6. Purandara mandapa: This is State protected monument and 150.59 mtrs from Regulated zone to the island.

7. Ancient path: This is nearly 121 mtrs; State protected monument and this is a Regulated zone.

x x x

Pre and proto-history of the Place-Virupapura Gadda

4. The hillock of Virupapura Gudda is identified traditionally as the kishkinda of Ramayana fame and has the attachment of the sentiment as the sacred site of Sri Ramachandra.

4.1 The heaps of granite boulders are the home of many natural rock shelters, which have proven to be the safe habitation of Proto historic man who as a wander used these shelters to start with before settling down into the hutments of makeshift shelters he built or him…The geomorphology of the place even today breathes a prehistoric atmosphere. This is so because of the natural habitat, the meandering river Tungabhadra offering little open grass lands with scrubby jungle harboring games for sustenance and building hutments for living during condusive climate. The huge rock shelters offered resting place perhaps during rainy season. The slope of the hillocks of the swarm of dyke formation at Virupapura Gudda offered requisite glade for the pre historic man. This remarkable integration of man-made and natural setting, vivid in the myriad facets, viz. art and architecture, socio-cultural, economical, administrative, defence organization and natural resource management, together enabled the establishment of this grand metropolis.

x x x

8. PROVISIONS IN THE INTEGRATED MANAGEMENT PLAN

1. This island is an important archaeological site, which formed an access point from the North, i.e. from Virupaksha Temple and Tungabhadra River Bank. The ancient access path from the main land to the island leading from the northern point can be observed when the water level is low in the river and during the months of summer, the same path way is in use. Otherwise when the river flows with full of water, to have the access the same route is used by the boatmen to take the people to the island. Hence, the site is of great archaeological importance…"

14.3 From these observations by the ASI, a specialized body responsible for archaeological research and conservation of cultural monuments in India, there remains little doubt as to the historical importance of Virupapura Gaddi. It appears that the Government had considered the comprehensive geographical entity of the area, including attributes like its landscape, prehistoric vestiges and water systems. Thus, the 1988 notification issued under Section 19(3) of the 1961 Act declaring Virupapura Gaddi as a protected area cannot be said to be without basis. Further, Section 19(4) of the 1961 Act clarifies that the notification issued under Section 19(3) conclusively establishes the status of Virupapura Gaddi as protected area under the said Act.

15. In light of this, we now proceed to consider the *effect* of the 1988 notification on the constructions raised by the Appellants during the period between 1991-2000. In this regard, Section 20 of the 1961 Act is relevant:

"**Section 20: Restrictions on enjoyment of property rights in protected areas.—**

(1) No person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining, quarrying, excavating, blasting or any operation of a like nature in such area, or utilise such area or any part thereof in any other manner without the permission of the Government:

Provided that nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for purposes of cultivation if such cultivation does not involve the digging of not more than one foot of soil from the surface.

A (2) The Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Deputy Commissioner may cause the building to be removed and the person shall be liable to pay the cost of such removal."

From a reading of sub-section (1) of Section 20, it is evident that owners/occupiers of protected areas cannot construct any building or utilize such areas in any manner *other than cultivation*, without the permission of the State Government.

16. Here, since the entire area comprising Virupapura Gaddi had been declared as protected area vide the 1988 notification, it follows that the land owned by the Appellants could have only been used for the purpose of cultivation after the issuance of such notification. However, as mentioned supra, the Appellants had constructed huts and buildings on their lands for the commercial purpose of running hotels, restaurants, and guest houses. Clearly then, these constructions were in violation of Section 20(1) of the 1961 Act.

17. Furthermore, the permissions/licenses obtained by the Appellants from the local panchayat were issued without any authority, as Section 20(1) of the 1961 Act makes the State Government the appropriate authority for granting permissions for non-cultivable use of protected areas. Thus, the licenses issued by the panchayat cannot but be said to be illegal.

18. In view of the foregoing discussion, we find that by virtue of the 1988 notification declaring the entire village of Virupapura Gaddi as a protected area, the restrictions on construction and use under Section 20(1) came into operation with effect from 22.10.1988 itself. Thus, the construction carried out by the Appellants on their lands at Virupapura Gaddi for commercial purposes was in violation of the 1961 Act.

Re: Second Issue

19. The **second** issue pertains to whether the HWHAMA could have proceeded to demolish these illegal constructions.

20. In this regard, as mentioned supra, the Appellants have argued that the HWHAMA, which is a body set up under the Hampi Act, could not have issued such orders for demolition as the illegality of the

constructions (if any) was rooted in the 1961 Act. At its very core, we find that this issue relates to the interplay between the 1961 Act and the Hampi Act. Thus, before delving into the relevant legal provisions, we deem it fit to appreciate the objects underlying these statutes and the contexts in which they were enacted.

20.1 As mentioned supra, the 1961 Act was introduced with the object of ensuring the preservation of ancient monuments and archaeological sites and remains in Karnataka. In pursuance of the same, the 1988 notification was issued under Section 19(3) declaring certain areas in Hampi as 'protected areas'.

20.2 Notably, in 1989, the group of monuments at Hampi were inscribed in the list of "World Heritage sites" declared by the United Nations Educational, Scientific, and Cultural Organisation (*hereinafter* 'UNESCO'). The UNESCO is a specialized agency of the United Nations and *inter alia* its objective is to encourage the identification, protection, and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity. In pursuance of the same, the UNESCO Conference adopted the *Convention concerning the Protection of the World Cultural and Natural Heritage* in 1972,[1] emphasizing the obligation of State parties to take necessary measures for the conservation and protection of world heritage properties.

Specifically, the recognition of the monuments at Hampi as a World Heritage site was based on the fulfilment of the following points of the 10-point criteria stipulated by UNESCO:

> **Criterion (i)- to represent a masterpiece of human creative genius:** The remarkable integration between the planned and defended city of Hampi with its exemplary temple architecture and its spectacular natural setting represent a unique artistic creation.
>
> **Criterion (iii)- to bear unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared:** The city bears exceptional testimony to the vanished civilization of the kingdom of Vijayanagara, which reached its apogee under the reign of Krishna Deva Raya (1509-1530).

[1] India ratified this Convention in the year 1977.

A **Criterion (iv)- to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history:** This capital offers an outstanding example of a type of structure which illustrates a significant historical situation: that of the destruction of the Vijayanagara kingdom at the Battle of
B Talikota (1565 CE) which left behind an ensemble of living temples, magnificent archaeological remains in the form of elaborate sacred, royal, civil and military structures as well as traces of its rich lifestyle, all integrated within its natural setting.[2]

C From the above, it is evident that the recognition of Hampi as a World Heritage site was a testament to its immense historical importance. It was also a crucial milestone in the efforts to preserve and protect the Hampi monuments, as it paved way for India to access the annual World Heritage Fund of US$ 4 million earmarked by the UNESCO for the upkeep of World Heritage sites.

D 20.3 Soon after such recognition, as the number of tourists visiting Hampi increased, concerns began being raised about uncontrolled construction, haphazard development, and other illegal activities carried out in the garb of catering to tourists. In light of these developments, the UNESCO classified the Hampi World Heritage properties as being 'in
E danger' in 1999. This classification was significant inasmuch as it reflected the deteriorating condition of the area. Notably, the Hampi World Heritage properties continued to be classified as such till 2006.

20.4 In view of such changes and its obligations under international conventions, the Government of Karnataka felt it necessary to create a
F body that would streamline the development in the Hampi region. However, till the time that a specific statute was enacted for such purpose, the HWHAMA was constituted as an interim authority vide a Government Order dated 21.03.2002. The Preamble to this order is notable:

G "**Preamble**: Hampi has been declared as a World Heritage Site by the UNESCO and the Government of India has recently

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[2] The Criteria for Selection to be included on the World Heritage List, *available at* https://whc.unesco.org/en/criteria/; The Description of Group of Monuments at Hampi, UNESCO World Heritage List, *available at* https://whc.unesco.org/en/list/
H 241.

announced that Hampi would be developed as an international destination centre. There is a need for proper management and development of Hampi World Heritage Area in order to conserve and preserve the rich heritage in this area and at the same time develop the area for providing good facilities for both national and international tourists. Thus all the activities in the Hampi World Heritage Area need to be regulated and coordinated in order to provide facilities and at the same time ensure proper conservation of the heritage. There is a need for a statutory body regulating on the issues pertaining to the management and development aspects in the Hampi World Heritage Area. The Government is contemplating a legislation constituting Hampi World Heritage Area Management Authority. In the interregnum, there is an immediate need to have an interim body to promote coordinated development of the heritage area. Thus the Hampi World Heritage Area Management Authority and the State Level Advisory Committee are being constituted through an executive order to manage the affairs of Hampi till the statutory bodies come into effect."

20.5 Subsequently, the State Government enacted a specific legislation for the conservation of the cultural heritage of Hampi, i.e. the Hampi Act. This Act was brought into force with effect from 27.01.2005, and the HWHAMA was constituted under Section 3 thereof. Until such time, the interim authority constituted vide Government Order dated 21.03.2002, mentioned supra, continued. The overall object of the Hampi Act can be gleaned from its Preamble, which reads as follows:

"An Act to provide for conservation of the cultural heritage of Hampi with all its archeological remains and natural environs; to preserve its cultural identity and to ensure sustainable development of the Hampi World Heritage Area, in the State of Karnataka and to constitute Hampi World Heritage Area Management Authority.

Whereas it is expedient to provide for,-

(a) the conservation of the Cultural Heritage and natural environs of Hampi and its surroundings;

(b) the preservation of the historical and cultural identity of Hampi as a World Heritage Centre;

(c) preventing uncontrolled development and commercial exploitation of the area;

A

(d) sustained development of the area which is conducive to the above objectives, and

(e) for matters incidental thereto…"

20.6 A close reading of the Preamble to the Hampi Act reveals an underlying common object between the 1961 Act and the Hampi Act– B providing for the preservation of the respective monuments and areas protected under these legislations. The difference is that the 1961 Act was enacted as a broader legislation covering the entire State of Karnataka, while the Hampi Act was enacted with a specific focus on the heritage site of Hampi, keeping in mind the international recognition C that had been accorded to it.

20.7 In addition to such common object, certain other provisions of the Hampi Act also indicate a continuity between the legal regimes of the 1961 Act and the Hampi Act. For instance, the Hampi Act directly incorporates the 1988 notification issued under Section 19(3) of the 1961 D Act, while demarcating the Hampi heritage area in its Schedule. "Heritage area" has been defined as follows under the Hampi Act:

"**Section 2: Definitions.-** (1) In this Act unless the context otherwise requires,-…

…(l) "Heritage Area" means the whole of the area comprising E the Core Area Zone, Buffer Zone and Peripheral Zones, but excluding the area referred to as protected area under the Ancient Monuments and Historical sites and Remains Act, 1958 (Central Act 24 of 1958);"

Parts A, B, and C of Schedule I to the Hampi Act respectively F indicate the extent of the core area zone, buffer zone and peripheral zone forming part of the Hampi heritage area. Under Part A, which indicates the extent of the core area zone, there is a clear reference to the area of 41.80 sq kms declared to be protected area under the 1988 notification.

G 20.8 Furthermore, even the applicable restrictions under the Master Plan 2021 prepared under the Hampi Act are similar to those imposed by virtue of the 1988 notification, inasmuch as no development of Virupapura Gaddi is permissible. The Master Plan 2021 came into force on 10.07.2008. It stipulates the formation of development schemes for towns and villages included within the Hampi local planning area. H

Though it did not provide for a specific development plan for Virupapura Gaddi, it provides Zonal Regulations for areas under special control, which include river islands, tank beds *et al*. Regulation 2(f) of these Zonal regulations, which deals with such areas of special control is relevant here:

> "(f) No development is permitted in eco-sensitive areas like river islands, tank bed areas, rocky outcrop, hillocks, and forest areas."

In light of this, given that Virupapura Gaddi is a river island, it is evident that no development is permissible there even per the Master Plan 2021 prepared under the Hampi Act. When juxtaposed with the restrictions under Section 20(1) of the 1961 Act, this also indicates a continuity between the 1961 Act and the Hampi Act.

21. In view of the foregoing factors, we do not find merit in the Appellants' argument that the Hampi Act is purely prospective in nature and that the HWHAMA, which has been established under such Act, cannot enforce prior notifications. In our considered opinion, the 1961 Act and the Hampi Act cannot be viewed as separate, watertight compartments that operate independent of each other. Such an understanding would not only defeat their underlying common objective, but also belie the events leading up to the enactment of the Hampi Act, all of which clearly reflect that the Hampi Act was a culmination of c*ontinuing* attempts by the State Government to preserve and protect the cultural heritage of Hampi. Therefore, the 1961 Act and the Hampi Act must not be construed as isolated silos. Since they both seek to fulfill a common object, they must be interpreted in a manner that seeks to *further* such objective, and not *obstruct* it.

22. In the present case, since it is established that the structures erected by the Appellants were in violation of the 1961 Act, given the common thread underlying the 1961 Act and the Hampi Act, it cannot be said that such illegality ceased to exist when the Hampi Act came into force. Thus, the HWHAMA was, and is entitled to proceed against the development raised by the Appellants, which had been rendered illegal under the prior legislation.

23. It may also be useful to appreciate the background in which the HWHAMA had proceeded to take action against the Appellants. As mentioned supra, the Hampi World Heritage properties had been included in the 'in danger' list by UNESCO in 1999. However, owing to serious

A efforts by the State Government and the HWHAMA, this classification was dropped in 2006. The threat to the various monuments and the integrity of the landscape of Hampi, however, continued. This is well reflected in the resolution of the 33rd meeting of the World Heritage Committee of UNESCO in 2009, wherein rampant illegal constructions in the village of Virupapura Gaddi, found a specific mention:

B

> "…The World Heritage Committee,
>
> 1. xxx
>
> 2. xxx
>
> C 3. xxx
>
> 4. xxx
>
> 5. xxx
>
> 6. xxx
>
> D 7. Expresses its concern over illegal constructions and other developments, such as social housing projects, within the extended boundaries which are being considered for the possible extension of the property, particularly in Virupapura Gada island and Hampi villlages, which appear to have a negative impact on the integrity of the landscape…."

E

Similar concerns were also raised at the 34th meeting of the UNESCO World Heritage Committee in 2010.

24. It was in the context of these developments that the HWHAMA had directed the local authorities to not renew the trade licenses issued to the Appellants, and later proceeded to issue notices for demolishing the constructions raised by the Appellants. In view of the broad ranging functions envisaged for the HWHAMA under Section 11 of the Hampi Act, we find that its actions were lawful, as it was incumbent upon the authority to act and not turn a blind eye to the illegality being perpetrated by the Appellants.

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25. Finally, we advert to the claim of the Appellants that the lack of a notification under Section 14(1) of the Hampi Act fettered the powers of the HWHAMA to take action against them. It may be useful to refer to Section 14 in this regard:

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> "**Section 14: No other authority or person to undertake development without permission of the Authority.-**

(1) Notwithstanding anything contained in any law for the time being in force, except with the previous permission of the Authority, no other authority or person shall undertake any development within the Heritage Area, of the types as the Authority may from time to time specify by notification published in the Official Gazette.

(2) No local authority shall grant permission for any development referred to in sub-section (1), within the Heritage Area, unless the Authority has granted permission for such development.

(3) Any authority or person desiring to undertake development referred to in sub-section (1) shall apply in writing to the Authority for permission to undertake such development.

(4) The Authority may, after making such inquiry as it deems necessary grant such permission without or with such conditions, as it may deem fit, to impose or refuse to grant such permission.

(5) Any authority or person aggrieved by the decision of the Authority under sub-section (4) may, within thirty days from the date of the decision appeal against such decision to the State Government, whose decision thereon shall be final:

Provided that, where the aggrieved authority submitting such appeal is under the administrative control of the Central Government, the appeal shall be decided by the State Government, after consultation with the Central Government.

(6) In case any person or authority does anything contrary to the decision given under sub-section (4) as modified in sub-section (5), the Authority shall have power to pull down, demolish or remove any development under taken contrary to such decision and recover the cost of such pulling down, demolition or removal from the person or authority concerned."

Evidently, under Section 14(1), the HWHAMA is made the sole authority for undertaking development in the heritage area of such types as it may specify by a notification.

25.1 Though the Appellants have contended that such a notification under Section 14(1) is a pre-condition for the HWHAMA to exercise its powers to order demolition under Section 14(6), we are not inclined to accept such an argument. In view of the co-terminus legislative scheme of the 1961 Act and the Hampi Act, we find that Section 14 of the

A Hampi Act acts as an overarching provision that enables the issuance of a *further* notification to control development in the Hampi heritage area. This, however, does not mean that the lack of a notification under Section 14(1) renders a prior notification intended for the same purpose unenforceable, as is the case with the 1988 notification here.

B 25.2 In any case, we find that the notification dated 10.07.2008 regarding the implementation of the Master Plan 2021 and the Zonal Regulations fulfils the requirement of Section 14(1) in the present case, as they clearly specify the restrictions as to land use and the prohibited types of development. Thus, the Appellants cannot use the absence of regulation of Virupapura Gaddi as a ground to justify the illegal construction C on their land.

26. In light of the foregoing discussion, we conclude that the construction of rooms, thatched roof huts, temporary structures, and buildings by the Appellants to carry on the business of hotels, restaurants, or guesthouses in Virupapura Gaddi was in violation of the 1961 Act. D Further, it is held that the HWHAMA had the authority to proceed with the demolition of such illegal constructions. Thus, we do not find any reason to interfere with the impugned final judgment and order dated 27.04.2015 passed by the High Court of Karnataka.

27. In view of these findings, the Respondents shall proceed with E the demolition of the illegal structures erected by the Appellants in Virupapura Gaddi within a period of one month from the date of this order. With such observations, the instant appeals stand dismissed. Ordered accordingly.

Ankit Gyan Appeals dismissed.