* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 28th May, 2019**

\+ **CS(COMM) 3/2018, IA No.90/2018 (u/O XXXIX R-1&2 CPC) & IA No.92/2018 (u/s 80(2) CPC)**

RAJ REWAL ..... PLAINTIFF

Through: Mr. C.M. Lall, Sr. Adv. with Mr. Vedanta Varma, Ms. Nancy Roy, Mr. Rupin Bahl & Mr. Akhil Kumar Gola, Advs.

Versus

UNION OF INDIA & ORS ..... DEFENDANTS

Through: Mr. Sanjay Jain, Sr. Adv. with Mr. Saket Sikri, Mr. Vikalp Mudgal, Mr. Yuvraj, Ms. Sneh Suman & Mr. Neil Mason, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The question for consideration is, whether an Architect, as author of artistic work of architecture in the form of a building or structure having an artistic character or design and having a copyright therein, upon the owner of the land on which building is constructed choosing to demolish the said building to construct another building in its place, has a right to restrain the owner from doing so and if the building has been demolished, to demand compensation therefor including by reconstruction of a building in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed.

2. The plaintiff has instituted this suit pleading that:

(a) plaintiff is an acclaimed architect, a distinguished doyen of architecture from India who is recognized internationally; the plaintiff has designed many important buildings throughout his forty years of distinguished career; some of the creations include the Hall of Nations, the Nehru Pavilion, the Asian Games Village, National Institute of Immunology, SCOPE Office Complex, the Library for the Indian Parliament, all in Delhi, the Lisbon Ismaili Centre, Portugal, the Indian Embassy in Beijing and the Visual Art University in Rohtak; the plaintiff is the author of the artistic work in all the said works of architecture and is the exclusive owner of the copyright in the said architectural works;

(b) the Hall of Nations and the Hall of Industries designed by the plaintiff were constructed in the year 1972 for the purpose of promoting commercial activities across 2,00,000 sq ft. area and the structure thereof was designed by Mr. Mahendra Raj;

(c) the design thereof was evolved to meet the constraints of time, availability of material and labour but above all, to reflect symbolically and technologically, the nation's prowess in structural engineering and architecture in the 25th year of its independence;

(d) the architectural ingenuity in these buildings has gained the plaintiff and Mr. Mahendra Raj a unique distinction of being the first "Large Span Concrete Structure" in the world;

(e) these iconic structures symbolize self sufficiency of the country for the use of concrete as against the more expensive alternate of using steel and iron to construct such buildings and structures;

(f) the work of architecture in the said buildings has been applauded by other well-known celebrated architects within and outside India, including in their literary works in the field of architecture;

(g) the aforesaid buildings were also celebrated in the commemorative stamp issued by the Government of India in the year 1992;

(h) the Nehru Pavilion in the said building has been exhibited in several international and national exhibitions and featured in various international and national magazines and publications;

(i) Bye-Law 23.16 of the Delhi Building Bye-Laws, 1983 and Bye-Law 7.26 and Para 1.15 of Annexure-II of Unified Building Bye-Laws for Delhi, 2016, provide for constitution of a Heritage Conservation Committee (HCC) to prepare a list of heritage sites and for conservation thereof; HCC was finally constituted under the orders of the Supreme Court and started functioning with effect from 6th August, 2004;

(j) the Indian National Trust for Art & Cultural Heritage (INTACH) compiled a list of 62 iconic buildings to be declared as heritage sites and forwarded the same to the HCC

and the said list was discussed in the meetings of the HCC from time to time; the Hall of Nations and Nehru Pavilion were included in the said list of 62 iconic buildings;

(k) the defendant no.2 Indian Trade Promotion Council (ITPO) mooted a proposal for demolition of Hall of Nations and the Nehru Pavilion and the same was immediately represented against by the plaintiff and Mr. Mahendra Raj;

(l) upon the representations of the plaintiff not meeting with any success and the HCC also not taking any steps for finalizing the heritage sites and making provisions for conservation and preservation thereof, the plaintiff filed W.P.(C) No.1146/2016 in this Court for revocation of the decision taken by defendant no.2 ITPO of demolition of Hall of Nations and Nehru Pavilion as part of the proposed re-structuring of Pragati Maidan Complex; the said writ petition was dismissed vide judgment dated 24th February, 2016 on the ground that mere pendency of representations to declare the building as heritage sites cannot be the basis to stall the re-development of the Pragati Maidan Complex;

(m) the plaintiff thereafter filed W.P.(C) No.2731/2017 for declaration of Hall of Nations, Hall of Industries and Nehru Pavilion as works of art of national importance and for preservation thereof during the proposed re-development of the Pragati Maidan; the said writ petition was dismissed vide order dated 20th April, 2017 on the ground that the HCC had already

examined the issue and had not directed the preservation of the building;

(n) the plaintiff preferred LPA No.299/2017 against the order dated 20th April, 2017 of dismissal of W.P.(C) No.2731/2017 and which appeal was pending at the time of institution of this suit;

(o) even before the appeal aforesaid could be heard, the defendant no.2 ITPO started demolishing the buildings in question and within a short span of time reduced the said buildings to rubble except the foundation thereof; and,

(p) Section 57 of the Copyright Act, 1957 protects the author's right of paternity as also right of integrity and hence makes actionable, distortion, mutilation or modification thereof, if established to be prejudicial to the author's reputation or honour; the act of demolition of the buildings aforesaid is contrary to the provisions of Section 57 of the Copyright Act.

3. The suit has been filed, seeking mandatory injunction against Union of India and Indian Trade Promotion Organization (ITPO) to compensate the plaintiff by recreating the work of architecture in the Hall of Nations and Nehru Pavilion at the same location or at any other location in Delhi which is equally prominent as the earlier location of the said buildings, under the direct supervision of the plaintiff.

4. The suit came up before this Court first on 5th January, 2018 when *inter alia* the following order was passed:

"7. I have at the outset enquired from the senior counsel for the plaintiff as to how the plaintiff, who is an architect and author of the architectural drawings on the basis of which buildings aforesaid were constructed, can claim to be the author of the buildings.

8. The senior counsel for the plaintiff draws attention to Section 2(b) of the Act defining 'Work of Architecture' and to Section 2(c)(ii) defining 'Artistic Work' and has contended that an architect would also be the author of the building constructed in accordance with his architectural drawings.

9. Attention of the senior counsel for the plaintiff has been invited to Section 2(d)(iii) defining 'Author' in relation to an artistic work other than a photograph and it has been enquired whether an architect who has merely prepared the drawings on the board, can claim to be the author of the building constructed in accordance therewith as also with the input of structural engineer and a large number of other persons/workers. It has further been enquired from the senior counsel for the plaintiff whether not the best architectural drawing are known to lead to not so best result/construction and vice versa and how can the architect who is merely the author of the architectural drawings can claim authorship of a building constructed over the land. The senior counsel is reminded of the Taj Mahal Hotel, Bombay, the popular story about which goes that the Foreign Architect thereof, after preparing the drawings went home, only to on return find the building, purportedly in accordance with his drawings, having been constructed wrong way around with what should have been sea facing and frontage being on the non sea facing side and vice versa.

10. It has further been enquired, as to how the architect can appropriate to himself a right over the land on which a building with his architectural drawings is constructed and have a right of prior consent for all future utilization of the said land.

11. It has further been asked from the senior counsel for the plaintiff, whether Section 57 of the Act would apply to each and

every building constructed with architectural drawing and to all architects.

12. The senior counsel for the plaintiff is ambivalent in his reply.

13. It prima facie appears that Section 57 of the Act applies only to the buildings which have been declared to be heritage buildings or of national importance. The plaintiff, though attempted to have the buildings aforesaid so declared, has not succeeded.

14. I am of the prima facie view that to interpret Section 57 as sought, would be an impediment to modernization and will interfere with rights of owner of land/building constructed thereon to land/property. The land use, FAR, amenities, keep changing with times and land, of which no more is being produced, cannot be allowed to be so locked up.

15. Though the senior counsel for the plaintiff has referred to dicta of Coordinate Bench in ***Amar Nath Sehgal Vs. Union of India*** *117 (2005) DLT 717 which is said to have attained finality but the same was not concerned with aforesaid issue.*

16. Being of the view that before this suit is admitted, the said threshold should be crossed, I have requested the presence of the learned Additional Solicitor General (ASG) also and he has been apprised of the queries made from the senior counsel for the plaintiff for admission.

17. It is deemed appropriate that both, if so desire, may file synopsis of their respective submissions and exchange the same before the next date of hearing.

18. List on 15th January, 2018."

5. Thereafter the senior counsel for the plaintiff and the senior counsel for defendant No.2 ITPO were heard on 24th April, 2018 and 9th May, 2018 when orders on admission of the suit were reserved.

6. Section 57 of the Copyright Act, on which rights claimed in this suit are premised, is as under:

> *"57. Author's special right.—[(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—*
>
> *(a) to claim authorship of the work; and*
>
> *(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:*
>
> *Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.*
>
> *Explanation.—Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.]*
>
> *(2) The right conferred upon an author of a work by sub-section (1) may be exercised by the legal representatives of the author."*

7. Attention during the hearing was also invited to Section 2(b),(c) and (d), Section 13(1)(a), Section 13(5) and Section 14(c) of the Copyright Act, which are as under:

> "2. ***Interpretation*** *– in this Act, unless the context otherwise requires, –*
>
> *(a) ……..*
>
> *(b) "work of architecture" means any building or structure having an artistic character or design, or any model for such building or structure;*
>
> *(c) "artistic work" means,—*
>
> *(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a*

photograph, whether or not any such work possesses artistic quality;

(ii) a work of architecture; and

(iii) any other work of artistic craftsmanship;

(d) "author" means, —

(i) in relation to a literary or dramatic work, the author of the work;

(ii) in relation to a musical work, the composer;

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

(v) in relation to a cinematograph film or sound recording, the producer; and

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created.

13. Works in which copyright subsists.— *(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—*

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) sound recording.

……

(5) In the case of work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

14. Meaning of Copyright.— *For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—*

(a) .....

(b) .....

(c) in the case of an artistic work,—(i) to reproduce the work in any material form including—

(A) the storing of it in any medium by electronic or other means; or

(B) depiction in three-dimensions of a two-dimensional work; or

(C) depiction in two-dimensions of a three-dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv).''

(emphasis added)

8. ***Amar Nath Sehgal*** supra relied upon by the senior counsel for the plaintiff in the hearing on 5th January, 2018 was a suit filed by another well known artist of the country, being the Sculptor of a mural adorning Vigyan Bhawan at New Delhi. Upon the mural being pulled down and consigned to the store room, the suit was filed for declaration of violation of the plaintiff's special rights under Section 57 of the Copyright Act and seeking an apology and injunction restraining further distortion, mutilation and damage to the mural and compensation for demolition, injury, insult and loss of reputation suffered by the plaintiff. It was held that (i) copyright law in India is at par with the Berne Convention; (ii) in conformity with the Berne Convention, Section 57 of the Act protects the author's right of paternity as also right of integrity; (iii) distortion, mutilation or modification, if established to be prejudicial to the author's reputation or honour are actionable; and, (iv) there is an urgent need to interpret Section 57 of the Act in its wider amplitude to include destruction of a work of art, being the extreme form of mutilation, since by reducing the volume of the authors creative corpus, it affects his reputation. The right of the author

was held to include an action to protect the integrity of the work in relation to the cultural heritage of the nation. Accordingly, mandatory injunction was issued directing the Union of India to return to the plaintiff the remnants of the mural and a declaration issued that all rights in the mural vested in the plaintiff and damages in the sum of Rs.5 lacs awarded against Union of India.

9. The senior counsel for the plaintiff in the subsequent hearings contended that (a) artistic work includes a work of architecture and the author thereof is the architect; (b) vide Section 13(1)(a) of the Copyright Act, copyright subsists in such artistic work; Section 13(5) only clarifies that the said copyright subsists only in artistic character and design and does not extend to process and methods of construction; (c) vide Section 14(c) of the Act, copyright in the case of artistic work confers in the architect, the exclusive right to reproduce the work in any form; (d) the Copyright Act does not make any distinction between the medium on which the artistic works is executed; thus even if the said medium is land belonging to another, the artistic work would subsist; (e) House of Lords in ***George Hensher Ltd. Vs. Restawile Upholstery (Lancs) Ltd.*** [1974] 2 All ER 420 held that copyright subsists irrespective of whether or not the work has artistic merit and artistic quality and that artistic merit in the work is irrelevant as a matter of statutory construction and that evaluation of artistic merit is not a task for which Judges have any training or general aptitude; (f) In ***Lucasfilm Ltd. Vs. Ainsworth*** [2011] UKSC 39 also it was held that the fact that a work of architecture is functional design does not disqualify it from copyright protection; (g) in ***Meikle Vs. Maufe*** [1941] 3 All ER 144

it was held that though the building owner is the owner of the plans prepared by the architect but the architect owns the copyright in the plan and also the design embodied in the owners building; the building owner may not therefore reproduce the plans or repeat the design in a new building without the architect's express or implied consent; on the contrary, the architect is free to repeat the building for another owner; the question, as has arisen herein, whether the building owner could not, without breach of copyright, do extensive repairs to the buildings or reconstruct the building which had been destroyed, was however left unanswered.

10. During the hearing, it was enquired from senior counsel for plaintiff, whether not the words "or other act in relation to work" immediately following the words distortion, mutilation, modification have to be read *ejusdem generis* and whether not Section 57 makes only distortion, mutilation and modification actionable and does not make demolition actionable. It was further enquired, whether not the act of demolition of a building effaces the building, ceasing the display of the building as a work and which, vide Explanation to Section 57(1), is an exception to the rights conferred by Section 57.

11. The senior counsel for ITPO appearing for the defendants in pursuance to the request contained in the order reproduced above, contended (a) that Section 57 of the Copyright Act invoking which the present suit has been filed, only authorizes restraint against damage, distortion, mutilation or modification of the work or to claim damage and does not provide for the author of the copyright to seek mandatory injunction for re-creation thereof; (b) the plaintiff in the present suit has

neither claimed the relief of damages nor sought the relief of injunction against destruction and which in any case could not have been sought since the building had been demolished prior to institution of the suit. Reference was made to ***Mannu Bhandari Vs. Kala Vikas Pictures Pvt. Ltd.*** ILR (1986) I Delhi 191. It was further argued that Section 57(b) of the Copyright Act confers rights only in respect of distortion, mutilation or modification of the work and is not concerned with total destruction of the work when the work ceases to exist and is not visible. It was argued that complete effacing of the work of architecture is akin to failure to display a work dealt with in explanation to Section 57(1) of the Act and which has been held to be not an infringement of the rights conferred thereunder. It was further argued that Section 57 is for enabling the architect to either restrain modification or distortion of the work so as to take away the artistic elements thereof in which the author has a copyright or to claim damages therefor; however, when the work is totally removed and is not in public view, the question of the same affecting the rights of the author does not arise. Attention was invited to P. Ramanatha Aiyar's "Advance Law Lexicon", 3rd Edition, defining 'mutilate' as something less than total destruction, to deprive of some essential part. Attention is also invited to the textbook "Law for Art's Sake" authorised by J. Sedfrey S. Santiago opining that the right is in work's integrity and not against destruction of the work. Reference is also made to 'Copinger and Skone James on Copyright' opining that deliberate and complete destruction of original embodiment of a work is often a controversial issue; while it almost certainly amounts to a treatment of the work. It is lastly contended that the

relief of mandatory injunction also does not qualify the test of Section 39 of the Specific Relief Act, 1963.

12. The senior counsel for the plaintiff, in rejoinder has argued that the demolition of the acclaimed work of the plaintiff is prejudicial to the honour and reputation of the plaintiff. Attention was also drawn to Section 56 of the Copyright Act providing for protection of separate rights and Section 59 of the Act providing that where construction of a building or other structure which infringes or if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright would not be entitled to obtain an injunction to restrain construction of such building or structure or to order its demolition notwithstanding anything contained in the Specific Relief Act, 1963.

13. The senior counsel for ITPO added that there is a difference between the work of an architect and sculptor and thus, ***Amar Nath Sehgal*** supra would not apply. It was also informed that LPA No.299/2017 preferred by the plaintiff and which was pending at the time of institution of the suit, upon demolition of the building had been disposed of as infructuous.

14. I have considered the respective contentions.

15. The doubts as to the maintainability of the suit which I had expressed in the detailed order passed on 5th January, 2018 reproduced above, on further hearing and further consideration stand affirmed.

16. However, before I commence setting down my reasons therefor, in deference to the plaintiff and to the contribution made by the plaintiff in the field of architecture and the high esteem in which he is held in the eyes of

those skilled in the art as well as in the eyes of those who have over the years been beneficiaries and connoisseurs of his works, I must state that I fully appreciate the feelings of the plaintiff in instituting this suit. The profession of an architect, though largely confined to practicing on a drawing board, is also a profession of pro-creating. The architect whose drawings transform into brick, mortar, concrete or other relatively new substances used in construction industry, are thus not mere creators of drawings and designs but creators of structures / buildings on land. It is like an art on a canvas. The canvas, without the art, has no or very little value (in case of land, though of value but of no use in an urban set up). Art is transformation of thoughts / ideas of the artist into form. The practitioners of such professions as of an architect or artist, thus give birth to something tangible and being in love with that is fully understandable. Their creation is like a child and falling in love with the child is an emotion which all can understand. When we as Lawyers and Judges, even without creating anything tangible, take pride in an interpretation of law which has earlier not existed, the love of artists and architects for what they have created, and the destruction of which by another is not the norm, is normal and sudden destruction of their creation is bound to cause pain. We as Lawyers and Judges are used to our arguments/judgments being not accepted/overruled but the artists and architects are not used to destruction of their work of love and pride. Seen in this light, the defendants Union of India and ITPO did owe a duty to the plaintiff, whose work and creation was embodied in the building/structure of which they have been beneficiaries, even if had deemed it necessary, for better utilization of land with changing times, to demolish the building, to inform the plaintiff in

advance of the same and explain to him their reasons therefor and to give an opportunity to the plaintiff to do whatsoever he desired with the building / structure, before demolishing the same. To that extent, the defendants Union of India and ITPO have erred in not so caring for the sentiment of and respecting the plaintiff and his work. However, to quote US Supreme Court Judge Sonia Sotomayor, "We apply law to facts. We do not apply feelings to facts."

17. A work of architecture, when transformed in a building or structure, has a very different connotation from most other works in which copyright subsists. [I say most, because there is a raging debate qua right of purchasers of devices with copyrighted technology embedded in them to opening up their devices and tinkering with them and which led to Digital Millennium Copyright Act of United States which criminalises production and dissemination of technology, devices or services intended to circumvent measures that control access to copyrighted works, whether or not there is infringement of copyright, impacting ownership of devices. A classic example is of John Deere Tractors which come with software locks which prevent farmers from repairing their tractors with cheaper technologies]. All such other works in which copyrights subsists, are expressed in mediums which in themselves are of no value viz. a canvas or a record or tape or paper. A painting or a drawing or a photograph or a film or an audio recording are on mediums title wherein invariably vests in the owner of the copyrighted work expressed thereon. So is a sculpture, unless permanently attached to earth. As distinct therefrom, a work of architecture translated into a building gets fixed / attached to the land; a work of

architecture cannot be transformed into a building except on land or immovable property. Such land may or may not be of the author of the architectural drawing and rather invariably is not of the author of the architectural drawing. Such land has a value of its own, even without the building with work of architecture thereon and often more than the value of the building thereon. While a building or structure, over the years depreciates in value, the value of the land appreciates, because no more is being produced. Because the building or the structure cannot, till now, be separated from the land, the land, once constructed upon, cannot be dealt with without the building thereon. Such land by itself is a subject matter of legislation with laws governing it and as per which the building or structure constructed on land is part of land and qualifies as land or immoveable property and which laws thus apply also to buildings/structures constructed on land.

18. The question which arises is, whether the laws relating to artistic work of architecture and the copyright therein, expressed on land belonging to another, can be interpreted without regard to laws relating to land.

19. As distinct from copyright, which is purely a statutory right and not even a natural or common law right, right to land/property, is not only a human and common law right but also a constitutional right and till the year 1978, was also a fundamental right.

20. The Legislature has enacted Copyright Act only to amend and consolidate the law relating to copyright and not the law relating to property/land. None of the provisions thereof can thus be construed as affecting a right in property/land. Copyright, unlike trade mark, is not a

common law right or a natural right and is purely a creation of statute. Thus, unless such copyright has roots in the statute, there is no such right. Reference in this regard can be made to ***The Chancellors, Masters and Scholars of the University of Oxford Vs. Rameshwari Photocopy Services*** 2016 SCC OnLine Del 5128. Further, copyright is not a positive right but an exclusionary right i.e. a right to prevent others from doing certain things. Save for what is provided in the statute, there is no other right. Section 16 of the Act expressly provides that no person shall be entitled to copyright or any similar right in any work, otherwise than under and in accordance with the provisions of the Act. Thus, unless a right to exclude/prevent the owner of the land, on which artistic work of architecture is executed, from using his land as he may desire including by removing the said work of architecture, is expressly provided, the owner cannot be so excluded in the garb of copyright.

21. On the contrary qua property/land i.e. immovable property, Supreme Court, in ***Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Ltd.*** (2007) 8 SCC 705, held (i) that the right to property is now considered to be not only a constitutional right but also a human right; President John Adams was quoted "property is surely a right of mankind as real as liberty"; (ii) that property, while ceasing to be a fundamental right, would however be given express recognition as a legal right, provisions being made in the Constitution itself that no person shall be deprived of his property save in accordance with law; (iii) that an owner of land ordinarily would be entitled to use or develop the same for any purpose, unless there exists certain regulation in a Statute or Statutory Rules; (iv) that

Regulations contained in such Statute must be interpreted in such a manner so as to least interfere with right of property of the owner of such land; (v) that restrictions, that too reasonable ones, are to be made only in larger public interest; (vi) that the scheme of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 relating to Town Planning should thus be interpreted as contemplating that a person and owner of land should not ordinarily be deprived from the use thereof; (vii) that an expropriatory legislation has to be given a strict construction; (viii) that having regard to the provisions contained in Article 300-A of the Constitution, even the State, in exercise of its power of eminent domain, though entitled to interfere with the right of property of a person by acquiring the same, but the acquisition must be for a public purpose and a reasonable compensation therefor must be paid; (ix) that any legislation which has the effect of depriving a person of his land without his consent, must be strictly construed and in the absence of any substantive provision contained in a legislation, owner of a property cannot be refrained from dealing with his property in any manner he likes. Again, in ***Karnataka State Financial Corporation Vs. N. Narasimahaiah*** (2008) 5 SCC 176, it was held that right to property although no longer a fundamental right is still a constitutional right and also a human right and in the absence of any provision either expressly or by necessary implication depriving a person therefrom, the Court shall not construe a provision, leaning in favour of such deprivation. Mention may also be made of ***Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai*** (2005) 7 SCC 627 where also, dealing with the provisions of the Land Acquisition Act, 1894, it was held that the Act, being an expropriatory legislation, provisions thereof

should be strictly construed as it deprives a person of his land without his consent. Similarly, in ***ICICI Bank Ltd. Vs. Sidco Leathers Ltd.*** (2006) 10 SCC 452, in the context of interpretation of the Companies Act, 1956 also, it was held that while enacting a Statute, Parliament cannot be presumed to have taken away a right in property; right to property was held to be a constitutional right and it was held that the Parliament while enacting the Companies Act could not be held to have intended to deprive the first charge-holder of the valuable right to property and such valuable right must be held to have been kept preserved. It was further held that if Parliament while amending the provisions of the Companies Act intended to take away such a valuable right of the first charge-holder, there is no reason why it could not have said so explicitly and that deprivation of legal right existing in favour of a person cannot be presumed in construing the Statute and in fact it is the other way round and thus, a contrary presumption shall have to be raised. In ***Bharat Petroleum Corpn. Ltd. Vs. Maddula Ratnavalli*** (2007) 6 SCC 81 it was held (a) that a Statute must be construed justly; an unjust law is no law at all; (b) that a Statute can never be exhaustive; the legislature is incapable of contemplating all possible situations which may arise in future litigation and in myriad circumstances; the scope is always there for the Court to interpret the law with pragmatism and consistently with the demands of varying situations; (c) that a construction placed by the Court on statutory provision has to be meaningful; (d) that though law and justice are not synonymous terms, they have a close relationship, since one of the ends of law is to provide order and peace in society and since order and peace cannot last long, if it is based on injustice, it follows that a legal system that cannot meet the demands of justice will not survive long; and,

(e) that right of property, though not a fundamental right, nonetheless remains the constitutional right and expropriatory legislation must be construed strictly. Finally, mention may be made of a nine Judges' Bench decision in ***K.S. Puttuswamy Vs. Union of India*** (2017) 10 SCC 1 holding that elevating a right to the position of a constitutionally protected right places it beyond the pale of legislative majorities; when a constitutional right, in that case, the right to equality or the right to life, assumes the character of being a part of the basic structure of the Constitution, it assumes inviolable status: inviolability even in the face of the power of amendment; ordinary legislation is not beyond the pale of legislative modification; a statutory right can be modified, curtailed or annulled by a simple enactment of the legislature; in other words, statutory rights are subject to the compulsion of legislative majorities; the purpose of infusing a right with a constitutional element is precisely to provide it a sense of immunity from popular opinion and, as its reflection, from legislative annulment; to negate a constitutional right on the ground that there is an available statutory protection is to invert constitutional theory.

22. Thus, when the Constitution in Article 300-A mandates that no person shall be deprived of his property save by authority of law, no law unless expressly providing for deprivation of property can, by implication be interpreted as depriving a person of his property.

23. In recognition of such right to property, though Section 14 of the Copyright Act confers exclusive right in the owner of the copyright, in the case of artistic work, to communicate the work to the public and to include the work in any cinematographic film, in Section 52(1) (s), (t), (u), (v) and

(w) constitutes, making of a photograph of or display of a work of architecture or inclusion in a cinematograph film of a work of architecture or a functional drawing of a work of architecture, not amounting to infringement of copyright so as not to prevent the owner of a property from letting others see his property and take photographs thereof. To that extent the Copyright Act discriminates between architectural works and their authors and other artistic works and in fact any other kind of works mentioned in the Copyright Act, as also noticed in http://dwo.co.il/Copyright-architectural-works, relating to legal position in Israel.

24. The provisions of Section 57 titled "Author's special right" providing that independently of the author's copyright and even after the assignment of the said copyright, the author of a work shall have the right as prescribed therein, have to be understood in above context. The right so conferred is a right to claim authorship and the right to restrain or claim of damages in respect of destruction, mutilation, modification or other act in relation to such work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. The Oxford English Dictionary defines "distortion" as "the twisting or perversion of words so as to give them a different sense" and "mutilation" as "the effect of rendering a thing imperfect by causing destruction of one or more of its parts". The words in Section 57(1)(b) of the Act "or other act in relation to the said work" have to be read in the context of what follows immediately thereafter i.e. "….would be prejudicial to his honour or reputation". Thus, other act in relation to the work within the meaning of Section 57(1)(b) of the Act, has

to be a work which renders the creation of the author prejudicial to the honour or reputation of the author. The words distortion, mutilation and modification in Section 57(1)(b) of the Copyright Act have to be understood as making the work look, appear, be seen, as something different from what the author had created and in which creation the honour and reputation of the author vests. The principle is that the work should not be rendered imperfect, affecting the honour and reputation of the Architect. However, it is explained that failure to display a work is not infringement of rights conferred by Section 57, in recognition/acceptance of, that what cannot be viewed, seen, heard or felt, cannot be imperfect and cannot affect the honour or reputation of the author. There is a difference between work itself and one of the embodiments of the work. While distorting or mutilation or modification of one of the embodiments of the work renders the work imperfect, prejudicing the honour or reputation of the author, destruction of the work in its entirety i.e. making it disappear, cannot be, prejudicial to the honour or reputation of the author. No imperfections can be found in what cannot be seen, heard or felt. In the case of a performance, there can be derogatory treatment thereof only if it is played in public or communicated to the public. However, if there is no performance at all, there can be no derogation thereof.

25. The Act does not give any guidance as to what is meant by honour or reputation of the author nor the test as to what is prejudicial to such honour or reputation. Reputation means the reputation which the author has carved out for himself in exercise of his profession. The addition of the word 'honour' indicates that the author's integrity as a human being should not

be attacked through derogatory treatment of his work. Section 57 caters to the need of the creator for protection of his honour and reputation. Deforming his work is to present him to the public as the creator of a work not his own, and thus make him subject to criticism for work he has not done. The destruction of his work does not have this result. The concept is akin to libel. In the context of architects, whose drawings / designs have transformed into a building over the land of others, the only rights under Section 57 of the Act can be to claim to be the architect of that building and to restrain making of any changes thereto, to make the building appear something different from what the architect had conceived and to thereafter also proclaim the concerned architect to be architect of a building which is very different from what the architect had authored. I like or dislike only a building/structure which I see. What I don't see, I don't judge. When a building is not seen, the question of forming any opinion of the architect does not arise.

26. Though during the hearing I had also enquired from the senior counsel for the plaintiff, whether every building/structure, even if constructed with computer generated work of architecture qualifies under Section 2(b) of the Act or only such buildings/structures which have a artistic character or design and if so, who is to judge whether a building/structure has an artistic character or design, whether the Heritage Conservation Committee or the Court, and in which context senior counsel for the plaintiff cited ***George Hensher Ltd.*** supra but on deeper analysis do not find the said question to be relevant for present purpose and I have proceeded to adjudicate presuming the architectural work subject matter of

present suit to be having artistic character or design and protection if any thereof under the Copyright Act.

27. The special rights of the author of an architectural work cannot be interpreted as being a restriction on the right to property of the owner of the land and building and entitling the author to restrain the owner of the land and building in which the architectural work has been expressed, from better utilizing his land or building by removing the existing building and constructing new building on the land. Rights conferred on the owner / author of a copyright conferred by the Copyright Act have to be necessarily read harmoniously with rights of others in whom the property / medium in which the right of the author or owner of the copyright is expressed. Artistic work or architectural work are not scarce and more can be produced. On the contrary land is scarce as no more is being produced (Though in recent years land has also been produced by reclaiming sea). Thus, Section 57(b) has to be necessarily interpreted as entitling the author / owner of a copyright to only restrain the owner / occupier of the building from dealing with the work of architecture in the building to make the building look otherwise than as designed by the author / architect. The public viewing the building in such altered form is unlikely to know that the alternation therein is not the work of the architect to whom the architecture of the building is attributed and such altered architecture of the building may prejudicially affect the honour and reputation of the architect. Thus, the embargo is only to making the copyrighted work look something other than as created and not against effacing the copyright work. Just like the purchaser of a work of art, copyright wherein vests in the artist, is entitled

not to display the same, so also the owner of a building, even if an acclaimed piece of architecture, cannot be restrained from demolishing the same and making a new building in its place.

28. The implementation / transformation into a building of the work of architecture is governed by other laws viz. the laws relating to town planning, building bye-laws, environmental laws and laws protecting the rights of owners of adjoining buildings. It is thus not necessary that the building or the structure constructed is always a true reflection of the drawings or the designs authored by the architect. Though the architects are expected to provide the drawings and designs in compliance of such laws but in a given case, it may not be so and the modifications, which the owners are required to make in complying with other laws or for other valid reasons, cannot, in my view, be objected to by the architect. Similarly, it may happen that during the course of construction, the building bye-laws change, requiring modifications to be made. Judicial notice can be taken of the comparatively recent modification in building bye-laws permitting additional height and additional floor to residential buildings. Judicial notice can similarly be taken of the recent enhancement in Floor Area Ratio available on land entitling the owner to construct over additional open land which was earlier mandatorily required to be left open and/or to add a floor. In my view, such entitlement of the owner of the land to raise additional construction cannot be objected to by the architect of the original building on the grounds of such additions, distortion, mutilation, or modification of his work. The only relief which perhaps the architect can have in such cases under Section 57 of the Act is to restrain the owner from claiming the

modified work also to be of the architect who had designed the building, as constructed in the original form.

29. The requirements of urban planning outweigh the moral rights of an architect. Similarly, technical reasons to modify the building, economic reasons justifying modifications to the building and the necessity to obtain an authorisation to build, all prevail over the moral rights. The architect cannot demand the intangibility of work because it would violate the right of ownership and the principles of freedom of commerce. Similarly, the functionality of the building has to necessarily outweigh the interest of the architect on the preservation of integrity. Thus, the owner of the building has full power to dispose it off and to destroy it.

30. The legal position, in my opinion is put beyond any pale of controversy by Section 52(1)(x) of the Act. Though Section 14 titled "Meaning of copyright" of the Act vide sub-Section (c) thereof, in the case of an artistic work, as the architectural work is, constitutes reproduction of the work in any material form i.e. construction of a building/structure in accordance with the architectural drawing, a copyright, meaning that no other building in reproduction of that architectural work can be constructed but Section 52 titled "Certain acts not to be infringement of copyright" in sub-Section (1)(x) thereof lists "the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed" meaning that such reconstruction is not an infringement of copyright. The question of "reconstruction", even if in accordance with the architectural drawings or plans by reference to which the building or structure was originally

constructed, would arise only if the demolition of the building constructed in accordance with the architectural drawings or plans were to be not prohibited by the Act. To hold that such demolition is prohibited by Section 57(1)(b) of the Act would render otiose Section 52(1)(x) permitting such reconstruction. It is settled principle of law that no part of the statute should be read in a manner so as to render another part thereof redundant or otiose. In the same vein, Section 59, even for infringement of copyright in work of architecture, by reproduction thereof in another building, does not permit demolition thereof, obviously because of competing rights in land/property.

31. The only judgment which I have been able to find having any similarity to the question as has arisen here, is of the Athens Court of First Instance (Section for Injunctive Actions) in ***Architecture Studio and Architectes Associes Pour L'environnement Vs. Organisation of Labour Housing (OEK)*** [2002] E.C.D.R. 36. In that case, the state-owned company held a competition in which it invited tenders for submissions of master plans for the Olympic Village and of building specifications for a pilot village, for 2004 Olympic Games. On conclusion of the Olympic Games, the village was intended for urban housing use. The claimants in that case won the first prize in the tender. However, when the plans were submitted for approval to the relevant Ministry, the claimants objected and contended that what was submitted was a distortion of the plan on which they were awarded the first prize and commenced action for restraining the state-owned agency from making any changes or raising construction as per the changed plan. The state-owned agency claimed that they were entitled to amend the plans, since the claimants had surrendered their moral rights.

While rejecting the claim for interim relief, it was held that the interest of the claimants in preserving the integrity of their work had to be balanced against the interests of the owners of the buildings which were the subject of that work; where there was a convergence of property, in that the same building embodied both the intellectual property of the author and the physical property of the building's owner, the right of the owner of the building would override the right of the intellectual property owner. The moral right was held to be the right to protection of the personal bond of the author and independent of the property right. I may add that in the said judgment, on an interpretation of the tender document therein it was also held that the owner was entitled to intervene and that the claimants had given up their moral right in the design. Though I had in the present case also called upon the parties to produce the tender in pursuance to which the plaintiff was awarded the work and the contract in pursuance to which the building was constructed, but both counsels informed that with the passage of time, the same were no longer available.

32. My research has disclosed that no jurisdiction in the world is prohibiting demolition of a building or structure constructed in accordance with the architectural drawings or plans. Under the Copyright Amendment (Moral Rights) Act 2000 of Australia there is no infringement of the author's right of integrity of authorship if the act complained of is reasonable; the matters to be taken into account to determine whether an act is reasonable are (a) the nature of the work; (b) the purpose for which the work is used; (c) the manner in which the work is used; (d) the context in which the work is used etc. A change in or the relocation, demolition or

destruction of, a building has also been expressly prescribed as not an infringement of the author's right of integrity of authorship in respect of an artistic work that is affixed to or forms part of the building if before the demolition is carried out, the author is given a notice to enable the author to make *inter alia* record of the work. Similarly Section 120 of the Copyright Act, 1976 of USA also permits the owner of a building embodying an architectural work to without the consent of the author or copyright owner of the architectural work make or authorise the making of alterations to such building and destroy or authorise the destruction of such building recognising that a building owner cannot be forced to keep a building or a particular design feature of a building which may no longer be needed, because another party owns a copyright to the structure. Mention in this respect may be made of ***GUILLOT-VOGT Associates, Inc. VS. Holly & Smith 848 F. Supp. 682*** and of ***David Phillips Vs. Pembroke Real Estate*** 459 F.3d 128. My other readings in this respect are listed below:-

(a) Moral Rights in the Public Domain, Subramania Bharati, Singapore Journal of Legal Studies [2001] 161-195.

(b) https/aippi.org/news/2013/edition30/Thomas_Widmer.html, relating to Switzerland.

(c) https://www.lexology.com/library/detail.aspx?g=7d5329e4-6329-439e-975b-93da493b298d, relating to France.

(d) Copyright Protection for Architecture After the Architectural Works Copyright Protection Act of 1999, Raphael Winick, Duke Law Journal Vol.41:1598.

(e) The Architectural Works Copyright Protection Act: Analysis of Probable Ramifications and Arising Issues, Andrews Pollock, Nebraska Law Review Vol.70, Issue 4, Article 5 (1991).

(f) ***Javelin Investments, LLC et al Vs. Angella McGinnis and Michael McGinnis*** 2007 WL 781190.

(g) ***John Carter, John Swing & John Veronis Vs. Helmsley-Spear*** 71 F.3d.77.

(h) ***Chapman Kelley Vs. Chicago Park District*** 635 F.3d 290.

(i) Authors, Attribution, and Integrity: Examining Moral Rights in the United States: A Report of the Register of Copyrights, United States Copyright Office, April 2019.

(j) Doctrine of Moral Right: A study in the Law of Artists, Authors and Creators, Martin A. Roeder, 53 Harv. L. Rev 554 (1940).

(k) Final Report of Marjut Salokannel & Alain Strowel of the study concerning moral rights in the context of exploitation of works through digital technology, study commissioned and issued by European Commission's Internal Market Directorate General.

(l) World Copyright Law: Protection of Authors' Works, Performances, Phonograms, Films, Video, Broadcast and Published Editions in National, International & Regional Law, Second Edition, by J.A.L. Sterling.

(m) The Modern Law of Copyright & Designs, 4th Edition, Laddie, Prescott & Vitoria.

33. It is not deemed necessary to deal with ***Mannu Bhandari*** supra of this Court, because the same was concerned with copyright in a novel of which film rights were also sold, but also because of the subsequent amendments of the year 1995 and 2012 to Section 57 of the Copyright Act.

34. I thus do not find any right in the plaintiff as architect of the building/structure, to, under Section 57 of the Copyright Act, object to the demolition of the work or to claim any damages for such demolition.

35. In the absence of any right, the plaintiff has no cause of action for the suit.

36. Resultantly, the suit is dismissed.

No costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

MAY 28, 2019
'gsr/bs/pp'