

RAJEEV MANKOTIA

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v.

THE SECRETARY TO THE PRESIDENT OF INDIA
AND ORS.

MARCH 27, 1997

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[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Ancient Monuments and Archaeological Sites and Remains Act,
1958 : Sections 2(a), 3, 4 and 11.*

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*Ancient Historical Monument of national importance—Duty of
Government of India and State Government to protect—Held preservation
and protection of ancient monuments is the duty of the Union of India and
the State Government concerned in respect of ancient monuments of national
importance or those of State importance respectively to protect, preserve and
maintain them by preserving or restoring their original conditions.*

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*Viceregal lodge at Shimla—Historical background of—Decision of
Union of India to convert the building into a tourist hotel while purporting to
maintain the main part of building as historical resort—Writ petition by way
of public interest litigation for projection and preservation of viceregal
lodge—Decision taken by Union of India and counter affidavit filed before
Supreme Court—Stand taken by Union of India that with a view to projecting
the building the building and the surrounding appurtenant area will be
earmarked as a "heritage area" wherein no construction activity would be
permitted or undertaken—Outside the heritage area a master plan would be
prepared in consultation with other departments—It would be ensured that the
environment and ecology of the area is preserved and no activity be taken
which may endanger the environmental position—Direction by Supreme Court
to Union of India to notify the entire area of the viceregal lodge as protected
ancient monument—Notification issued on 6th May 1997—Held protection
and preservation of viceregal lodge and the appurtenant land has become *faite
accompli* by orders of Supreme Court—Direction issued to Government to
provide the necessary budget for effecting repairs—Proper maintenance and
preservation to be undertaken as on-going process—Direction to Government
of India to maintain all national monuments—Equally all the State Govern-
ments should do vis-a-vis monuments of State importance.*

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- A Edward J. Buck, *'Simla Past and Present'*; Pat Barr and Ray Desmond, *'A Hill Station-Simla in British India'*; Larry Collins and Dominique Lapierre *'Freedom at Midnight'*, referred to.

ORIGINAL JURISDICTION : Writ Petition (C) No. 862 of 1990.

- B Under Article 32 of the Constitution of India.

Mr. Sudarash Menon for the Petitioner.

V.R. Reddy, Additional Solicitor General, A. Subba Rao, Ms. Anil Katiyar, Y.P. Mahajan, N.K. Sharma and V.K. Verma for the Respondents.

- C The following Order of the Court was delivered :

Viceregal Lodge at Shimla is a harbinger of Colonial past, with architecturally grandeur and beauty of Elizabethian Era and Stands a mute witness to the transition of independence to the people of India after sustained non-violent struggle by the Father of the Nation, Mahatma Gandhiji. Three Historical meetings between Colonial administration and the India leaders took place to discuss the issue of the India independence under the leadership of Mahatma Gandhiji, viz., (i) in June-July 1946 - the historical Cabinet Mission of the India leaders; (ii) in May-June 1947; and (iii) the final one wherein historical decision was taken by Louis Mountbatten for transition of the power conveying the proposal to the Indian leaders through Pandit Jawaharlal Nehru; that was followed by grant of independence to the nation and the worst holocaust of communal disturbance due to partition of the great ancient nation into India, i.e., Bharat, and Pakistan.

- F The journey of Simla, Summer Capital of the Supreme Government, started in 1827 by the first Governor General, Earl of Amherst and Viceregal Lodge, the official residence built by the 17th Viceroy, Earl Dufferin, was occupied on July 23, 1888. Though Lord Dufferin and Lady Dufferin personally supervised its taking finished shape, its completion work went on till September 1988 which had the present shape of the building given by Earl of Marquis of Lansdowne till 1889 - the only Viceroy who exclusively lived therein during his entire tenure, i.e., from 10th December, 1888 to 26th June, 1894 in Summer Camp. The building was built with an exquisite Himalayan gray stones and personified the English Renaissance of Elizabethian style of architecture. The beauty and

grandeur of the building is unique. The Viceroys/Governor Generals used this building as Summer Camp from April to October of each calendar year and the British ruled the entire India from this building. It was also used as part of Legislative Wing. Ultimately, after independence, it was renamed as 'Rashtrapati Niwas', dawning with smile the freedom for Bharat and the Presidents of the Bharat Republic stayed therein as Summer Resort until Dr. Sarvepalli Radhakrishnan, the second President had it handed over to the India Institute of Advanced Studies in the year 1964. The President himself had inaugurated the Institute when Dr. Jakir Husain, then as its Chairman, and who later became the President of India, has chaired the meeting. It thus furnishes the historical evidence of the Colonial holocaust unleashed on Indians and reflects upon the triumph of Indian nationalism; it has laid seed-bed to the end of the British colonialism. Whether such a building is required to be maintained as historical monument of national importance, is the question before us.

When Dr. Radhakrishnan, the President of India felt that that since the President spent hardly 120 days in 10 years, i.e., 10 days a year, it was worthwhile to house the said Institute therein, instead of keeping the historical monument as idle building which would facilitate maintaining the grandeur and beauty of the Building. However, the fact is that with the passage of time, it has faded out and lost its real beauty. While the Institute was being so run, cruel decision was taken by the Cabinet of the Union of India to convert the building, a priceless treasury of our Historical heritage, into tourist hotel, while purporting to maintain the main part of the building as historical resort. Feeling the inner voice of its ultimate destruction, the petitioner has knocked the door of this Court, and in our view rightly, to protect it as the historical heritage and to preserve or posterity.

Before considering whether the Viceregal Lodge should be declared as historical heritage (monuments), let us have a look at the legal setting in that behalf. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short, the 'Ancient Monuments Act') provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance. The Act was enacted to clarify the legal position that the Central Government regulates exclusively ancient monuments etc. of national importance, leaving the field open to the State Legislatures to enact the law on the subject, i.e., ancient monuments of State importance. Section 2(a) defines 'ancient monument' to mean any

A *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* (emphasis supplied) :

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- (i) the remains or 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
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- (iv) the means of access to, and convenient inspection of an ancient monument.

D Section 3 of the Act declares that all ancient and historical monuments and archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act 1951, or by Section 126 of the States Re-organisation Act, 1956, to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purpose of this

E Act. Section 4 empowers the Central Government to declare any ancient monuments or archaeological site and remains not included in Section 3 to be of national importance by giving two months notice of its so declaring. The Ancient Monuments Preservation Act 1904 provides for the preservation of ancient monuments and objects of archaeological, historical or

F artistic interest. Section 2(1) defines 'ancient monument' in the same language as Section 2(a) of the Ancient Monuments Act. Section 2(4) defines 'maintain' and 'maintenance' to include the fencing, covering in, repairing, restoring and cleaning of protected monument and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto. Section 3 deals with

G 'protected monuments' and empowers the Central Government, by a notification in the official Gazette, to declare an ancient monument to be a protected monument under the said Act. Section 11 enjoins that the Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in Section 4 or which

H the Government has acquired under Section 10 etc.

It would, therefore, be manifest that all ancient and historical monuments and all archaeological sites and remains or any structure, erection or monument or any tumulus or place of interment shall be deemed to be ancient and historical monument or archaeological sites and remains of national importance and shall be so declared for the purpose of Ancient Monuments Act if they have existed for a century; and in the case of a State monument, of State importance covered by the appropriate State Act. The point of reference to these provisions is that an ancient monument is of historical, cultural or archaeological or sculptural or monolithic or artistic interest existing for a century is of national importance or of State importance. In other words, either of them are required as shall be protected, reserved and maintained as national monuments or State monuments for the basis which not only gives pride to the people but also gives us insight into past glory of our structure, culture, sculptural, artistic or archaeological significance, artistic skills and the vision and wisdom of our ancestors, which should be preserved and perpetuated so that our succeeding generations learn the skills of our ancestors and traditions, cultural and civilisation. They would have the advantage to learn our art, architecture, ascetic tastes imbibed by the authors of the past and to continue the same tradition for the posterity. Preservation and protection of ancient monuments, is thus the duty of the Union of India and the State Government concerned in respect of ancient monuments of national importance or those of State importance respectively to protect, preserve and maintain them by preserving or restoring their original conditions.

Coming to the birth, the improvements and the existence of the Viceregal Lodge, we have the graphic account in that behalf by Edward J. Buck in his 'Simla Past and Present. Before adverting to it, it is of importance to note that Simla is a beautiful Hill Resort on the small spurs of the lower Himalayas. At the beginning of the last century, though Simla did not find place in the world tourist map and remained a small village taken by the British from the Jhind Rana in 1855 and then given to Maharaja of Patiala for the assistance rendered to the British in the Nepal War. Maharaja of Patiala maintained Simla as a sanatorium. The British, thereafter, had stationed their Commander of the North-Eastern States at Simla. Captain Charles Pratt was the first foreigner sent as Superintendent of the Hill States. He was stationed at Simla. After survey of the area, the

- A Britishers discovered the beauty and grandeur of Simla and the hills and development it as a hill resort and ultimately summer resort by shifting the Administration for Calcutta and later from Delhi. The first Governor General, the Earl of Amherst, for the first time, visited Simla and stayed in the house of Captain Kennedy, namely, Kennedy House. Thereafter successive Governor Generals and Viceroys continued to stay, apart from Viceregal Lodge, for some time, in various houses by name Bentinck Castle, Auckland House, Strawberry Hill, Peterhof. Ultimately, as stated earlier, Earl of Dufferin had the building plans approved and got constructed the Viceregal Lodge and entered for the first time into the House.
- C The structural and magnificent furnishing done to the Viceregal Lodge finds expression delineated in Buck's "Simla Past and Present". Lady Dufferin mentioned in her diary, seeing the furnished building on Sunday, 15th July, 1888 as under :

- D "I went to the new house this afternoon, and it did look lovely. It was one of Simla's most beautiful moments, between showers, when clouds and hills, and light and shade, all combine to produce the most glorious effects. One could have spent hours at the window of my unfurnished boudoir, looking out on the plains in the distance, with a great river flowing through them : at the variously shaped hills in the foreground, brilliantly coloured in parts, and softened down in others by the fleecy clouds floating over them or nestling in the valleys between them. The approaching sunset, too, made the horizon gorgeous with red and golden and pale-blue-tints. The result of the whole was to made me feel that it is a great pity that we shall have so short a time to live in a house surrounded by such magnificent views."
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On 23rd July, 1888, they returned to the building and mentioned as under :

- G "We are sending things up to the house and hope to sleep in it on Monday. We really inhabit the new Viceregal Lodge today (23rd July, 1888) so I left the old directly after breakfast, just returning therefor an hour at lunch time, and busied myself whole day arranging my room and my things, and the furniture in the drawing-room. Happily the weather was very tolerable, and our beds got up here dry. D. and the girls did not come near the place till
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dinner time, when everything was brilliantly lighted up by the electric light. It certainly is very good, and the lighting up and putting out of the lamps is so simple that it is quite a pleasure to go round one's room touching a button here and there, and to experiment with various amounts of light. After dinner we went down to look at the kitchen, which is a splendid apartment, with white tiles six feet high all round the walls, looking so clean and bright. We sit in the smaller drawing-room, which is still a little stiff and company-like, but it will soon get into our ways and be more comfortable."

On August 8, 1888, they had first entertainment in the new house and the book contains its account as under :

"We had our first entertainment in our new house tonight. It looked perfectly lovely, and one could see that everyone was quite astonished at it and at the softness of the light. First we had a large dinner for sixty-six people at one long table. The electric light is enough, but as candelabra ornament the table we had some on it. At one end of the room there was a side-board covered with gold plate, etc., and at the other end double doors were open, and across the ball-room one saw the band which played during dinner. We had all the Council and 'personages' of Simla, and the Minister, Asman Jha, from Hyderabad, who brought his suite. After dinner people began to arrive for the dance. When not dancing, everyone was amused roaming about the new rooms, and going up to the first floor, whence they could look down upon the party."

"Viceregal Lodge possess, as it rightly should, one of the most commanding position in Simla. It lies to the extreme west of the station, and is one of the first objects to strike the eye as the traveler approaches from Kalka. Described briefly it consists of a main block of three stories, and another called the kitchen wing, of five storeys, but the latter is built on the side of a precipice, and commences three storeys below the ground level of the main block and east wings; so that viewed from the north-east the house has a very lofty, somewhat forbidding appearance, and might at a distance be mistaken for a medieval castle.

A The style of architecture throughout is English Renaissance (Elizabethan), the masonry of the walling is light blue limestone, and the wrought stone work is all of sand stone of a very fine grain and beautiful light gray tint. This stone is uniform in texture, and is capable of being worked to very short arises; the moulding are all true, and where carving has been carried out it is bold and sharp. Very little stone carving has been used, but what there is of it relieves the plain parts, and is very effective. The walling stone was quarried about five miles away and was transported to Simla on mules, but much of this was found to be porous and was replaced with hard stone from Kalka and Sanjouli at a cost of nearly a lakh and a quarter. The cut stone was brought in for 50 miles from the foot of the hills near Kalka. Carrying on the labour in the winter was a matter of much difficulty as the masons refused to work except for extremely high wages, while carpenters were not obtainable at any price. A small tower surmounts the house from which flies the flag which denotes the presence of the Viceroy in Simla. In this tower are the water tanks into which is pumped the supply from the municipal mains, and the view from its summit on a clear day is magnificent. To the north, and north-east particularly, the ranges of perpetual snows are seen to great advantage over the peaks of the nearer ranges, while on the west, especially in the rains, there is a grand view of the plains, with the Sutlej winding away in the distance. The house, grounds, and approaches are now lighted by electricity. There are about 1,000 lamps, the majority of 16 candle-power, and the engines which used to supply the power situated near the main entrance gate and close to the stable range. This shed has since been dismantled and is converted into a transformer room on the ground floor, with the offices of the Superintendent of Viceregal Lodge on the first floor. The engines were sold and replaced by a transformer. Inside, the house is beautifully built and finished, the fine entrance hall, with its gallery leading to the ball-room, being perhaps the main feature. This gallery is fifty feet in height, ninety feet long, but only eighteen feet broad, which is really much too narrow.

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H The woodwork however, is beautiful. For instance, the treads, newels, and handrails of the main staircase are of teak, the blusters are solid walnut, the carriages and concealed portions of the

framing of the stairs are of deodar, some of the carving being very bold and effective. Heavy velvet curtains divide the galler from the ball-room, an apartment seventy feet by thirty feet with a side annexee seventy feet by ten feet on the west, and a vestibule seventeen feet by thirty feet on the east. These really are a portion of the room as they communicate with it by large openings twenty feet wide. Another velvet curtain hangs over the opening to the state drawing-room, sixty feet by thirty feet, a charming room, with the wall panels hung in silk tapestry and the woodwork painted white. The upper part of the gallery is hung with Japaness paper in white and gold heavily embossed. Perhaps the state dining-room appeals most to the ordinary visitor. This is paneled all round ten feet high with teak, the upper two feet being in pierced strap work, and supporting the shields charged with the armorial bearings of the several Governors-General and Viceroys of India, all illuminated in the proper heraldic colours. These now make a splendid decoration. The walls are divided by means of pilasters supporting the ceiling beams, and their upper portion is hung with crimson silk and woolen tapestry, while there is a good deal of bold carving in the room. On the occasion of a state dinner the scene is a particularly brilliant one. The furnishing of the house was originally done partly by Messrs. Maple & Co. who sent out their assistant for the purpose; many of the simpler articles, however, were made by Punjab carpenters whose work was excellent."

Lord Lansdowne, during his term of office made improvements and the grounds surrounding the house were planted out with trees and shrubs. Many improvement which were designed mainly for the purpose of garden parties were carried out under the supervision of Mr. A. Parsons, the English Authority on gardening in Simla. The Viceregal entertainments were conducted in large scale.

When Lord Curzon took over the charge in 1889, Lady Curzon took interest in renovating the building. She got hung damask, sky- blue and pale green in the two drawing rooms yellow in the ball room, and crimson in the dining room. Most pleasant part of the house was, in their view, its grounds and Lord Curzon added to them an avenue of limes; the rose 'pergola' which was such a typical feature of many large Victorian gardens and parks, was designed by Lord Curzon. Lady Curzon felt that "a look

A out of the windows makes up for it all, and I can live on views for five
years" (as mentioned in 'A Hill Station - Simla in British India' by Pat Barr
and Ray Desmond.) In this behalf, it is of interest to note that the British
B authors have not lost their gratitude to mention the native people, their
glamour and simplicity. One of the greatest Telugu poets, Sri Sri in his
'Mahaprastavan' had said that the beauty of Taj Mahal cannot be measured
C by the Emperor Shahjahan's point of view who got it constructed in
memory of his beloved queen Mumtaj Mahal; but from its delicate
craftsmanship and carvings of the workers, architects and the masons who
built the mansion, the world renowned national heritage of our nation.
Similarly, reflections can be found from the masons, the men and women
D who built the Viceregal Lodge under the supervision and guidance of Mr.
Henry Irvin, the architect and the Chief Superintendent of the work
assisted by Mr. F.B. Harbert and L.M. Seth Clay as Executive Engineer
and M/s. A. Scott T. Macpheryn and T. English Assistant Engineers as
mentioned by Mr. Edward J. Buck in his Second Edition recorded from
the diary of Lady Dufferin on July 16th 1887 as under :

"D. took Hermie and me all over the house in the afternoon. We
climbed up the most terrible places, and stood on single planks
over yawning chasms. The workpeople are amusing to look at
E especially the young ladies in neckless, bracelets, earrings, tight
cotton trousers, turbans with long veils hanging down their backs,
and a large earthen-ware basin of mortar on their heads. They walk
about with the carriage of empresses, and seem as much at ease
on the top of the roof as on the ground-floor; most picturesque
F masons they are. The house will really be beautiful, and the views
all round are magnificent. I saw the plains distinctly from my
boudoir window, and I am glad to have that open view, as I shall
not then feel so buried in the hills."

Thus, the great Indian masons, men and women had built the mag-
G nificent ancient monument with their heart, sweat and labour to be enjoyed
by the Viceroys/Governor Generals who conquered the country because
of disunity among the Indian rules and because some rulers connived with
the British forces. Disintegration of the society was on account of regional
and religious difference, caste structures and mostly personal feuds and
H rivalries among the Rajas and Maharajas themselves.

As stated hereinbefore, the freedom movement was launched in a non-violent manner, the Father of the Nation, Gandhiji called by the people with love "Bapuji" and sustained as people's movements was carried on over years at the sacrifice of life of numberless patriot men and women. The Viceregal Lodge witnessed two historical Conferences held by the Indian leaders with the Viceroy/Governor General and in particular Lord Mountbatten who was instrumental in handing over the Bharat to us. The ancient India got dissected into two parts, viz., Bharat and Pakistan, due to two-nation theory successfully campaigned by Sri Jinnah on behalf of the Muslims, who later regretted for the damage done by him to the great nation. The emergence of two nations ultimately resulted in the halocaust of communal disturbances and loss of lives of innocent British Indians who included both Hindus and Muslims. In this behalf, in 'Freedom at Midnight' by Larry Collins and Dominique Lapierre it is mentioned in Chapter VI titled "A Precious Little Place, Simla, May 1947" precluding the events leading to the division of India. It is mentioned therein that during May 1947, Lord Mountbatten had stationed himself in Simla in this very Viceregal Lodge. The authors have narrated their research in the following words :

"Each year in mid-April when the warm weather arrived, the Viceroy's departure for Simla in his white and gold viceregal train signalled that the mountain capital's season had begun."

It is mentioned at page 123 that "Much of that old Simla was already gone by the time Louis Mountbatten arrived in early May 1947. Now an India could even walk down the Mall - provided he was not wearing the national dress of his country". Earlier, Indians were prohibited from going there. "Simla changed with an easily foreseen rapidity after independence. The Indians, because of its connotations, abandoned it as their summer capital. The only thing which remains of the old Simla, 'M.S. Oberoi, owner of the Cecil's Hotel and Chairman of Oberoi's Hotels Ltd., lamented in 1973, 'is the claimate'. The Viceregal Lodge also was used as a part of the Legislative Wing for the summer session of Parliament and it, therefore, has the taste of transacting legislative business with the Indian legislators partly composed with the British Administrators. Lord Mountbatten had finalised the plan in Simla to divide India into three countries, namely, Bengal, composed of East and West Bengal, Pakistan and India, apart from retention of the respective areas had by named rules. A graphic account

A was given as to how Lord Mountbatten had his plan secretly disclosed, by inviting Pandit Jawaharlal Nehru, the first Prime Minister, who was a very close friend of Lord Mountbatten and an important spokesman on behalf of the Congress Party, to Simla. Lord Mountbatten had shown his plan of division of India. The violent reaction of Panditji was noted as mentioned at page 126 as under :

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"The British had run India for three centuries with the byword 'Divide and Rule'. They proposed to leave it on a new one; 'Fragment and Quit'. White-faced, shaking with rage, Nehru stalked into the bedroom of the confidant Krishna Menon who'd accompanied him to Simla. With a furious gesture, he hurled the plan on to his bed."

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"It's all over!" he shouted."

D Because of the reaction of the Panditji to such a division of India, Mountbatten realised that he cannot succeed in his effort to hand over the power to the people in fragmentation. Therefore, he redrafted the plan and at the call of the then Prime Minister, Mr. Ailee, he went to London, had discussions and ultimately succeeded to divide the country as India, i.e., Bharat and Pakistan; and Independence Act was enacted by British

E Parliament in conclusion. It would, thus, be seen that Viceregal Lodge, as stated earlier, is a mute witness to the destruction of Indians, their subjugation as subject of British empire who ruled the country for over three centuries by 'divide and rule'. The agony of the Indians and the glory of the British empire and the Simla as its summer Seat for the Asian British

F empire was witnessed by this Viceregal Lodge. Equally, it is also a witness to heralding of new era of independence though the ancient India was fragmented into two nations, namely, india, i.e., Bharat and Pakistan. India, thus, became a sovereign, socialist, secular democratic republic under a written Constitution. Democracy is its basic feature; constitutionalism, rule of law and democratic governance as basic means to establish an

G egalitarian social order in which every citizen of Bharat is entitled to enjoy justice - social, economic and political - liberties, and equality of status and of opportunity, with dignity of person and fraternity among all the sections of the society as an integrated Bharat. Such being the historic evidence furnished by a Viceregal Lodge, is it not the duty of the Indians and of the

H Government of India to preserve Viceregal Lodge an a monument of

national importance for the posterity of the historic evidence so that every Indian citizen while visiting Shimla would have the glimpses of it to recall the folly of disunity, teaching us the lesson of being united so as not to destroy ourselves once over and loss democracy and liberties on account of disunity, disharmony on grounds of religion, region, caste, language; and denial of all opportunities and facilities to our own weaker segments of the society; of equality of opportunities and of status to improve excellence in chosen facets of the respective lives. Answer is obviously 'YES'. If we forget the past and repeat the same mistake, we would stand to lose our nation's unity and integrity; stand to lose the opportunity to integrate into the world our great democratic Bharat Republic. Viceregal Lodge teaches us these lessons and it is for all of us, individually and collectively, to learn, awake arise and work for integration, unity and fraternity, which are our fundamental duties.

In this backdrop, when the writ petition was filed by way of Public Interest Litigation, this Court issued rule nisi on November 19, 1990 to all the respondents. Initially, a stand was taken in the counter-affidavit filed by the Union of India that they had decided to use a part of the area for commercial purpose and the rest of the main building to maintain and restore the glory of the Viceregal Lodge. Thus the decision to convert the historical building into a tourist hotel was sought to be justified on the ground that the Ministry of Tourism has encouraged a scheme of heritage resorts which essentially means preservation of the old properties and their use in such a limited commercial manner so as to generate enough sources to ensure that the properties will not crumble. As regards the construction of Five Star Hotel in the area, it is stated thus :

"The premises may not necessarily be converted into a five star hotel as commonly known but the concept plan will be more of a heritage resort, which would enhance and project the cultural identity of the area instead of destroying it."

This Court was not satisfied with the counter-affidavit filed on behalf of the Government of India. Therefore, it gave directions on November 24, 1995 to have the matter reconsidered by the Cabinet Sub-Committee. Accordingly, a counter-affidavit was again failed on January 22, 1996 stating that "in August 1982, the Union Cabinet took a decision that the Indian Institute of Advanced Studies which is housed in the Rashtrapati

- A Nivas building should be shifted to some other building in Shimla". It was further stated that "At a subsequent Cabinet Committee meeting held on 8th May, 1990, it was decided that the entire campus earlier known as Viceregal Lodge may be transferred to the Ministry of Tourism for being developed as a major tourist resort by the ITDC with the stipulation that
- B the main building will not be used for tourist purposes. It was also decided that the Institute of Advanced Studies which is housed in the campus of the Rashtrapati Nivas Estate may be shifted to an alternative site offered by the Government of Himachal Pradesh." "In February, 1992 the matter was further discussed by the Committee of Secretaries and the earlier decision was amplified to the effect that the main Viceregal Lodge with a
- C part of the appurtenant land should be preserved and maintained as a national museum and the surrounding land may be handed over the Ministry of Tourism for development of a tourist resort." Therefore, it was stated that "it would be unnecessary for the matter to be taken to the Cabinet once again for a decision about the preservation of the main
- D building and the appurtenant land as heritage property". It was also stated that there were "no plans for the development of any part of the Rashtrapati Nivas estate into a five-star hotel complex. No plan for any such purpose has been discussed or finalised nor has any budgetary allocation been made for the said purpose in the Eighth Five Year Plan". The last para itself is a manifest of the intention of the Government that its use
- E in future as a tourist resort had not been ruled not. As a consequence, by Order dated February 27, 1996, this Court stated thus :

- F ".... the Chief Engineer of the CPWD, In-charge of the maintenance of Vice Regal Lodge has brought to the Court echology album of the entire area. It was stated that around the building, as at present, there is not proposal for construction of tourism hotels, as originally proposed, but there is a direction of the Division Bench of the Shimla High Court directing the Secretary, Human Resources Development and Urban Development should decide as to what is the extent of appurtenant land around the building beyond which
- G the CPWD intends to construct quarters and office building for the employees transferred and stationed there or which is part of the property leased out to the Institute of Advance Studies."

- H This Court observed that since the Government of India had admitted in the counter-affidavit that the building part of the appurtenant

land would be preserved as National Monuments by the Archaeological Department, the question that had arisen was what would be the appurtenant land. The Court was informed the around 65 acres was the land near the main building at the observatory hill and 25 acres of the land was situated elsewhere at prospect hill. This Court indicated to the learned senior counsel for the respondents that the appurtenant land which was kept vacant, as was admitted in their counter-affidavit, should be 25 acres surrounding the entire building. The Court directed that if the said land is used for any other public purpose, like establishment of tourist hotels or office buildings, which was originally proposed and resolved by the Cabinet Resolution, the same should be beyond that area and that too without contravention of the Forest Act and other relevant laws. The counsel sought and was granted time for producing tentative plan proposed by them without touching the appurtenant land. When the matter had come up for next hearing on April 3, 1996 counsel was not present and, therefore, the matter was adjourned indicating that in case of non-appearance, appropriate orders would be passed.

A counter-affidavit dated April 26, 1996 was filed on behalf of the Government of India stating therein that a meeting of the Secretary, Department of Urban Development, Secretary, Ministry of Urban Affairs and Employment, Secretary, Department of Education, Ministry of Human Resources Development, Joint Secretary, Department of Tourims, Ministry of Civil Aviation and Tourims and other officials concerned with the matter had met on 22nd March, 1996 and decided as under :

"(a) The Appurtenant land around Rashtrapati Niwas (on the Observatory Hill) was agreed to be 24.27 acres. This was determined both from the engineering angle and with a view to protecting the natural surroundings of the Rashtrapati Niwas. It was also agreed that the building of Rashtrapati Niwas and the surrounding appurtenant area will be earmarked as a "heritage area" wherein no construction activity should be permitted or undertaken.

(b) In regard to the area outside the heritage area, a master plan would be prepared by the Ministry of Urban Affairs and Employment (Department of Urban Development) in consultation with Ministry of Human Resources Development

A (Department of Education), Ministry of Civil Aviation and
Tourism (Development of Tourism), Ministry of Environment
and Forest and concerned local agencies like the Shimla
Municipal Corporation, The Town Planning Department and
the State Forest Department, so as to ensure that the environ-
ment and ecology of the area is preserved and no activity be
B taken which may endanger the environmental position.

(c) In regard to the remaining part of Rashtrapati Nivas Estate
(on Prospect Hill) the land could be put to such use as the
Government may determine from time to time, subject to the
C due compliance with the applicable law including the Forest
Act, Town Planning Act, Local Municipal Law and others."

It was further stated therein that the as per the detailed plan of the
Rashtrapati Nivas Estate placed before this Court, the designated bound-
ary of the Rashtrapati Nivas Building with the appurtenant land agreed
D upon as "heritage area" was shown by a broken line in brown colour. The
area therein suggested was 24.27 acres in place of 25 acres, to be preserved
within the natural boundaries formed by the roads encircling Rashtrapati
Nivas. On May 6, 1997, learned counsel for the petitioner was directed to
verify and make a report with regard to the plan submitted and whether
E any further modification was required. Counter-affidavit accompanied by
the reports was filed on behalf of the petitioner stating that the Viceregal
Lodge consists of an area of 90 acres which included ancillary buildings
that constituted the whole estate of the Viceregal Lodge. The said buildings
namely, Corzon House, Del Ville, Clair Villa, Bilaspur House, Bilaspur
F Cottage and Squires Halla have not been included in the plan submitted
by the Government and they were not included within the heritage area. It
was also stated that the Viceregal Lodge, as suggested by the plan requires
repairs for the upkeep for the said monument and the said building
requires to be notified as a protected monument and the memorabilia
within the Lodge should be notified as protected antiquities. A report in
G support was also accordingly filled. As a large part of the building requires
repairs, preservation and restoration to their original form. for effectuating
the grandeur and beauty of the building, direction was given to look into
the objections raised in the enclosed report and the matter was adjourned.
After compliance thereof, a report has been submitted demarcating the
H area and identifying the contiguous land in the plan appended to the report

but notification in that behalf had not been issued. Therefore, by proceedings dated August 19, 1996, the Government of India was directed to notify the entire area of the Viceregal Lodge as a protected ancient monument. After several adjournments, ultimately the notification came to be issued on 6th May, 1997 with the boundaries as directed in the orders and mandamus in that behalf stands complied with. Thus, the protection and preservation of Viceregal Lodge and the appurtenant land as historical heritage has become *fait accompli* by orders of this Court.

It is needless to mention that as soon as the Indian Institute of Advanced Studies vacates the building and hands it over to the Archaeological Department, the Government should provide the necessary budget for effecting repairs and restoring to the building its natural beauty and grandeur. It is also necessary that proper maintenance and preservation is undertaken as an on-going process to protect the historical heritage and needed repairs are effected from time to time. We avail this opportunity to direct the Government of India to maintain all national monuments under the respective Acts referred to above and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour workmanship, craftsmanship and the skills of the Indian architects, artists and masons is continued to be preserved. They are pride of Indians and places of public visit. The tourist visitors should be properly regulated. Collection of funds by way of admission/entrance fee should be conscientiously accounted for and utilised for their upkeep and maintenance under respect regulations/rules. Adequate annual budgetary provisions should be provided. In this behalf, it may not be out of place to mention that if one goes to Williamsburg in United States of America, the first settlement of the Britishers therein is preserved as a tourist resort and though it is one in the row, its originality is maintained and busying business activity goes on in and around the area attracting daily hundreds of tourists from all over the world. Similar places of interest, though of recent origin, need to be preserved and maintained as manifestation of our cultural heritage or historical evidence. Similar efforts should also be made by the Government of India, in particular the Tourism Department, to attract foreign tourists and to give them good account of our past and glory of the people of India as message to other countries and territories. Equally all the State Governments would do well vis-a-vis monuments of State importance, thought given power under Entry 12, List

- A II of the Seventh Schedule to the Constitution. From this perspective, the petitioner has served a great cause of national importance and we place on record his effort to have the Viceregal Lodge preserved and maintained; but for his painstaking efforts, it would have been desecrated into a five Star Hotel and in no time, "We, the people of India" would have lost our ancient historical heritage.
- B

The writ petition is accordingly disposed of.

T.N.A.

Petition disposed of.