

CASE COMMENTARY

RAJ Rewal vs. Union of India & Ors. CS (COMM) 3/2018, IA NO. 90/2018, IA NO. 92/2018.

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Abstract

The creator of a work holds exclusive copyright over it. This rule is, however, inapplicable to architecture as the rights of the landowner are involved too. This case comment analyses *Raj Rewal v. Union of India & Ors.*,² an unprecedented case that establishes the difference between architecture and other protected works through a comparison between partial and complete destruction of an architectural structure, and its effect on the architect's rights. The main issue before the court – Whether an architect can object to the complete destruction of his work by the legal owner of the structure and the land on which it is constructed? – is scrutinized by this paper. This case, distinctive to the world of Intellectual Property Rights, has specifically been chosen as the judgment wholly depends on the interdisciplinary analysis of the rights of both parties to the case, each conferred by different legislation – the Indian Constitution and the Copyright Act – to establish predominance that assists a favourable ruling for one party over the other.

I. Introduction

*Raj Rewal v. Union of India & Ors.*³ analyses the difference in the applicability of Copyright Law for architectural works. Since a building/structure is constructed on land, laws and rights governing land are involved too. This case compares the rights of a landowner against that of a copyright owner, in other words, the right to property against the legal protection of one's intellectual product. This case was born due to the overlap of the landowner's right to free usage of his property and the architect's copyright over his work. It, in turn, emphasizes the differential effect of complete destruction of a work as compared to partial destruction, a subject never addressed before in the history of Indian Copyright Law, hence, a matter of in-depth analysis. This case holds a unique position in IPR law as it captures the legal difference faced by architectural works as compared to other works, arising due to 2 reasons:

1. Unlike architecture, other protected works add value to the medium through/on which they are expressed like canvases, tapes etc., which by themselves have minimal value. In architecture, the structure is constructed on land which not only has a considerable value of its own but also appreciates with time.
2. Unlike in other protected works, an architect's copyright is not exclusive to him. Several entities (and their rights) are involved too. Thus, the case elucidates the position of Copyright of the artist/author as against the Constitutional rights of the owner of the land and the property attached to it.

II. Description And Background Information

The plaintiff, an internationally-renowned doyen in architecture, earned his repute by designing several celebrated structures throughout a 40-year career. The Hall of Nations and the Nehru

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²CS (COMM) 3/2018, IA No. 90/2018, IA No. 92/2018.

³Ibid.

Pavilion, the structures in question, were some of his infamous creations upon which he exclusively owned copyright. Considering their significance, the Indian National Trust for Art & Cultural Heritage (“INTACH”) included them in a list of 62 iconic buildings to be commemorated as heritage sites by the Heritage Conservation Committee (“HCC”). However, before the HCC made its declaration, the ITPO expressed the intention to destroy the structures to redevelop the Pragati Maidan Complex (“the project”). Resultantly, the plaintiff filed a writ petition for revocation of the ITPO’s intention which was dismissed as pendency of the HCC’s declaration was insufficient ground for delaying the project. Thereafter, the plaintiff filed another two-fold writ petition to:

1. Declare the structures to be of “National Importance” and
2. Order their preservation.

This petition, too, was dismissed to which the plaintiff filed an appeal. Sadly, before the appeal could be heard, the ITPO materialized its intention. As a result, the plaintiff initiated this suit in 2018 seeking compensation from the defendants *via* reconstruction of the buildings according to his original plan, either in the same locality or an equally prominent locality in New Delhi.

The issue for consideration before the Delhi High Court was – Whether the plaintiff, an architect with exclusive copyright protection over his works, had the right to stop the defendants (on whose land the buildings were constructed) from destroying his work which, if already carried out, had the right to seek compensation for said destruction? To address this issue, some sub-issues needed deliberation, such as – Whether “destruction”, though not expressly mentioned in Section 57 of the Copyright Act (“the Act”), can be inferred under the phrase “...or other act”⁴? Whether the plaintiff can claim damages under Section 57 for the complete destruction of his work⁵?

Hon’ble Rajiv Sahai Endlaw, J., the sole judge in this case, ruled in favour of the defendants and rejected the plaintiff’s objection to their destruction as the latter failed to establish his right under Section 57, thus, a cause of action altogether.

III. Case Analysis

The court reasoned its judgment on two focal points *viz.* the interpretation of Section 57 of the Act and the difference between the legal position held by landowners and copyright owners. Firstly, the language of Section 57(1)(b) expressly states, “*distortion, mutilation, modification*” which all refer to partial destruction of a work, unlike the case at hand. The bench further clarified that “*or other act*”, though implicit of acts similar to distortion, mutilation and modification, needed to be read with “*prejudicial to his honour or reputation*”⁶, therefore, establishing the disparity between partial and complete destruction of a work. Section 57 applies to the former and provides the artist with a possible remedy. However, in case of complete destruction, such as this case, Section 57 shall become inapplicable due to the impossibility of prejudice to the artist’s honour or reputation as the work is not publicly visible to allow the formation of an ill opinion. This further elucidated the object of Section 57 – to prevent the artist’s work from being portrayed as anything other than he/she originally planned, to be viewed

⁴The Copyright Act, 1957, Copyright Office, Government of India § 57, Cl. (1)(b).

⁵The Copyright Act, 1957, Copyright Office, Government of India, § 57.

⁶*Id.* At 3.

and opined upon by the public, hence, potentially discrediting his/her honour or reputation. The court also analyzed the US and Australian copyright legislation to demonstrate that neither of them prohibits complete destruction of the protected work for similar reasons.

Secondly, unlike other protected works where the medium and the creative work, both belong to the author, the land on which architectural works are constructed doesn't usually belong to the architect. Besides, since land is a limited asset (unlike architecture), it exceeds such structures in monetary and legal value. Considering land as a valuable asset by itself (unlike mediums in other protected works) with separate laws governing it, the rights of the landowner shall be considered alongside that of the copyright owner. There is a major difference between their rights – a landowner has the constitutional right to property while a copyright owner has statutory moral rights. While the court emphasized the importance of both rights being harmonious to one another, it was impossible to respect the right of the copyright owner (“plaintiff”) to preserve his original work and that of the landowner (“defendant”) to freely utilize his land in this case. The court was obligated to identify and rationalize the rights that would receive preference. Thus, as the right to property is a common law right, constitutional right⁷ and a human right⁸ in comparison to moral rights which are merely statutory, the rights of the landowner/defendant would prevail over that of the copyright owner/plaintiff. Further, Article 300A of the Constitution confers the right against deprivation of one's property, except “*by authority of law*”.⁹ Therefore, an individual may be deprived of his/her right to property only if expressly provided in a statute and upon fulfilment of the following conditions: 1. The statute must be interpreted to least interfere with the landowner's right to property, 2. The statute must be reasonable and in public interest, and 3. Reasonable compensation must be paid in exchange for such acquisition by the state.¹⁰

Moreover, constitutional rights hold a higher place than statutory rights in Indian law. In this case, the court referred to the landmark decision of *K.S. Puttuswamy v. Union of India*¹¹ to expand the basis of bestowing a right with a constitutional element – to immunize it from the whims of the popular opinion/legislative majority. To the contrary, a statutory right can be amended, altered or annulled by a simple legislative majority. Therefore, a constitutional right (to property) cannot be ignored for statutory protection (under the Act).

Additionally, the court divulged into the significance of urban planning and development over the preservation of architectural design. It held that replacing architecture is a task governed by town planning laws, environmental laws, building bye-laws, etc., not by copyright law. Therefore, the plaintiff's urge to perpetually preserve his work in its original form is unreasonable and the destruction of his work for urban development cannot be objected to, as favoured by the explanation to Section 57(1)(b).¹²

The court also referred to *Architecture Studio and Architectes Associes Pour L'environnement v.*

⁷*ICICI Bank Ltd. v. Sidco Leathers Ltd.*, (2006) 10 SCC 452.

⁸*Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd.*, (2007) 8 SCC 705; *Karnataka State Financial Corporation v. N. Narasimahaiah*, (2008) 5 SCC 176.

⁹India Const. art. 300A.

¹⁰*Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd.*, (2007) 8 SCC 705.

¹¹(2017) 10 SCC 1.

¹²*Id.* At 3.

*Organisation of Labour Housing (OEK)*¹³ of the Athens Court of First Instance. The case revolved around building plan submissions for the Olympic Village in the 2004 games. The winning plan was to be utilized for habitable urban housing. The winning team, however, objected to the plan that was submitted for the Ministry's approval as it was considerably changed. Their demand for submission of the original plan was eventually rejected as the claimants' interests were to be balanced with that of the legal owners of the plan. Since the copyrighted work of the architects and the legal title of the building owners were both represented by a singular structure (as in the case at hand), the latter will always prevail over the former as the transfer of ownership of the building denotes the surrender of moral rights of the creator. The court's rationalization in the case of *Raj Rewal v. Union of India & Ors.*¹⁴ is consistent with that of the Athens Court. Therefore, in light of the aforementioned reasons, the judgment, in this case, was not only appropriate but momentous in the domain of Indian Copyright Law. It conforms to the current copyright legislation and further clarifies tacit legal aspects. Though there could be a higher emphasis on the difference, in effect, between complete and partial destruction, it does not compromise the merit of the judgment. The court provided satisfactory justification for its decision. Pertinently, this judgment provides ample opportunity for improvement in the subsisting copyright law in India to effectuate further clarification to prevent similar cases from knocking the doors of justice in the future.

IV. Conclusion

A thorough factual perusal of this case has led to some crucial findings that further justify the court's decision in favour of the defendants. Firstly, as established, Article 300A, a constitutional right, will prevail over Section 57, a statutory right. Article 300A confers positive and negative rights, either of which may be exercised by the defendants. Negative rights include the right to destroy the property (lat. *jus abutendi*). Such destruction, whether complete or partial, cannot be opposed as the transfer of the title to a property is equivalent to the surrender of the moral rights of the architect. The consideration paid to purchase the property includes its structural design and, thus, acts as a reward for the architect's creativity. This transaction, once complete, thereby, prohibits the architect from claiming ownership over his design and demanding its preservation in its original form for eternity. Therefore, the defendants, as legal owners of the disputed structure and land underneath it, have the liberty to destroy the structure.

Secondly, the reference made, by the counsel for the plaintiff, to the infamous *Amar Nath Sehgal v. Union of India*¹⁵ case is incorrect due to the following differences:

- Amar Nath Sehgal was a sculptor who owned his work and the medium on which it was expressed (the canvas),
- He was requested (by the government of India) to adorn the "Vigyan Bhavan", the house of international conferences, to represent Indian culture. Therefore, his work was of national importance, and
- His work was partially destroyed, hence, allowing an opportunity for prejudice to his honour and reputation amongst the viewers/public who are unlikely to know that the

¹³[2002] E.C.D.R. 36.

¹⁴Id. At 1.

¹⁵2005 (30) PTC 253 (Del).

work portrayed to them is not the original work of the artist. None of the aforementioned conditions are fulfilled in this case.

Thirdly, Section 57 applies solely in partial destruction of the work to prevent preservation and use of the author/artist's original idea by another person. Complete destruction renders such cases impossible as no part of the artist's original idea is preserved. The primary structure is destroyed only to create a novel structure, the copyright of which will lie in the hands of the latter's creator. The pivotal shift from the "Sweat of the brow" doctrine to the "Modicum of Creativity" doctrine¹⁶ depicts the same. The Delhi High Court, in *Dr. Reckeweg and Co. GmbH. and Anr. v. Adven Biotech Pvt. Ltd.*,¹⁷ necessitated that a work, to be eligible for legal protection, must originate from the author/artist and must not be a copy of another. The USA Supreme Court¹⁸ and the England Chancery Division¹⁹ reflect the same.

V. Alternatives suggested:

1. The interpretation clause of the Act may be expanded to include 'reputation', 'honour' and 'artistic character of a work'. Further, separate provisions may be inserted to convey which acts are prejudicial to the author/artist's honour and repute.
2. Section 57 may be expanded to expressly clarify its applicability to the partial destruction of works only.
3. A separate provision may be inserted stating that the constitutional right to property of the landowner would prevail over the moral rights of the artist in case of architectural works.
4. A provision may be inserted conveying that a work, except those formally declared to be "of national importance", may be destroyed for modernization and industrialization.

¹⁶*Eastern Book Company v. D. B. Modak*, 2002 PTC 641.

¹⁷I.A. 7326/2007 in CS (OS) 1189/2007.

¹⁸*Feist Publication Inc. v. Rural Telephone Service*, 499 U.S. 340, 342 (1991).

¹⁹*University of London Press v. University Tutorial Press*, [1916] 2 Ch. 601.