

Pratap Sundar v. Hastipur Municipal Corporation

Hastipur, a city in Vihār district of Nand Pradesh (a State in India), has a population of 4 million. Vihār district is known for its folk music, dances and art. Hastipur is its modern face, a booming metropolis, where the western mingles with the traditional.

The city has a well-known theater-house ‘Kala-Vihār’, owned and managed by the Hastipur Municipal Corporation (HMC). It was constructed in 1976 at one end of a large tract of land. The area on that land surrounding the Kala-Vihār is a public garden. The garden and Kala-Vihār attract tourists from India and abroad. Kala-Vihār has a seating capacity of 1500 and is used for staging drama, theater, music and dance programmes.

The entire west wall (entrance side) of Kala-Vihār stands independent of the theater building, and has a mural designed and created in 1976 by Pratap Sundar, a world-renowned artist and sculptor. The mural depicts in Pratap Sundar’s distinctive style various forms of folk dance and art of Vihār. It is visible from throughout the garden. The mural is Hastipur’s identity. It is prominently displayed on the home-page of Nand Pradesh government, home-page of Hastipur Corporation, and private web-pages relating to Hastipur and Nand Pradesh. Its photographs find place in all tourist-guides, tourism brochures of Nand Pradesh, Vihār and Hastipur. Any tourist visiting Hastipur is bound to visit Kala-Vihār.

The HMC had engaged Pratap Sundar in 1975 to make the mural. After discussions between officials of HMC and Pratap Sundar, HMC wrote a letter of 15 May 1975 inviting Pratap Sundar to make the mural:

“Dear Mr Pratap Sundar,

It is an honour to invite you to design and execute the mural on the west wall of the proposed Kala-Vihār theater.

You may engage your own contractor to construct the wall, and to execute the mural. The plans, dimensions and specifications of the wall are attached to this letter.

The construction of the wall shall commence after 12th October 1975, and the mural work shall be executed before 15th January 1976. The mural must be ready on this date, since the Kala-Vihār is to be inaugurated by the President of India on 26th January 1976.

You will receive a total amount of Rs 10 lakhs as follows:

Rs 8 lakhs as reimbursement of costs for the construction of the wall and mural

Rs 2 lakhs as artist’s remuneration.

Payment shall be made as follows ...

All rights, interest and property in the wall and the mural shall vest in the Corporation.

You shall agree not to replicate, copy or reproduce the mural in any form for any purpose in the future.

Other terms and conditions about progress of work etc. are in the enclosed standard form agreement. ...”

Pratap Sunder gave a letter accepting this invitation, but wrote:

“I accept the invitation, with a condition that copyright in the mural shall remain with me”.

HMC replied:

“Thank you for your letter of acceptance. The condition described in the letter has been discussed here at length. However it has been decided that all rights and property concerning and arising out of the project shall remain as provided by law.”

Pratap Sundar commenced work thereafter. The wall was constructed, mural executed, and Pratap Sundar received the entire payment. A description of the mural and of Pratap Sundar has been inscribed in stone at the foot of the mural.

The Hastipur Municipal Corporation Act under which HMC has been constituted provides that the HMC shall be capable of owning and holding property and of making contracts.

In July 2013, the HMC decided to demolish Kala-Vihār and construct a multiplex scheme to house a museum, an auditorium, an open-air theater, a cinema-house, an entertainment-park and an exhibition center. The decision to locate such a multiplex on the same site was taken after lengthy discussions with organisations and renowned consultants, and after inviting suggestions from the public. The plans were ready, and tenders were invited for demolishing Kala-Vihār and constructing multiplex. This required removing the wall with the mural.

Pratap Sundar wrote to the HMC in September 2013:

“The Commissioner,
Hastipur Municipal Corporation,
Hastipur.

It is known that the Corporation will demolish the mural outside Kala-Vihār. I object to its demolition. Kindly stop demolition immediately. Else I will seek legal protection.

Sd/- (Pratap Sundar)”

HMC replied that it owned the wall, and under proviso (dd) inserted in 1984 (by the Copyright (Amendment) Act 1984) to section 17 of the Copyright Act, also copyright in the mural, and was entitled to demolish it, and the only right Pratap Sundar had were special rights given in the Copyright Act which did not affect destruction of the wall, but applied to the ‘work’; however, it could assist Pratap Sundar to relocate the wall to any site of his choice, at Pratap Sundar’s expense.

Pratap Sundar wrote that the wall cannot be relocated without destroying the mural.

HMC’s contractor has commenced work of clearing the site.

Pratap Sundar has filed a suit in the District Court of Hastipur for injunction restraining HMC from demolishing the west wall and mural, and has also sought similar temporary injunction.

Case is fixed for hearing of application for temporary injunction in March 2014. Argue for Pratap Sundar and HMC.

The problem is formulated by Nilima Bhadbhade, ILS Law College, Pune. Anyone is free to use it for non-commercial educational purposes, provided the author is acknowledged. The problem is inspired by a judgment of the Delhi High Court in *Amar Nath Sehgal v. Union of India* decided on 21.02.2005. The facts in the problem are imaginary.

Facts of the case are located in India, and laws of India apply. The following laws may be referred: (i) The Copyright Act 1957, (ii) The Indian Contract Act 1872, (iii) The Code of Civil Procedure 1908, (iv) The Specific Relief Act 1963.