

LEGAL LOCK JOURNAL
2583-0384

VOLUME 1 || ISSUE 3

2022

This Article is brought to you for “free” and “open access” by the Legal Lock Journal. It has been accepted for inclusion in the Journal after due review.

To submit your Manuscript for Publication at Legal Lock Journal, kindly email your Manuscript at legallockjournal@gmail.com.

Case Commentary

AMAR NATH SEHGAL VS UNION OF INDIA (2005): HOW MORAL RIGHTS OF AN ARTIST WON THE BATTLE OF THE MURAL

Sohail Vij¹

ABSTRACT

The moral rights of an artist over his work were put to the test in a High Court of India in 1992, in *Amar Nath Sehgal v. Union of India And Anr.*², the case became a 13-year legal battle, finally settled in 2005. The decision taken by the single bench of the Delhi High Court was instrumental in determining the course of moral rights in the country. It also gave a broad construction to the term moral rights in the country, by not only providing for the right of the author in the case of any distortion, mutilation, modification or other act in relation to the work if such distortion etc. would be prejudicial to his honour or reputation but also ‘right of the author to receive the copyrighted work for the purposes of restoration and sell it’. It included within the moral right of integrity the right to protect an artistic work from outright destruction. The interim decision in the case, given by Justice Jaspal Singh, given in favour of the plaintiff, restricted the Indian Government from causing any further loss to the plaintiff by destroying the property. The interim ruling, given in 1992, established two central points about the ambit of moral rights within India. Firstly, that the moral right of integrity under Indian Law can in fact protect an artistic work from outright destruction and secondly, that the Government has a duty of care towards artworks in its possession. This gave rise to amendments in the Copyright Act in 1994. Even though the purported primary motive of the Government was to bring the Indian Act in conformity with the Berne Convention, the wording of the amendment seemed to be a direct reaction to the interim ruling. Under the amended Section 57, a legal claim by an author against unauthorized modifications to his work had to establish that the treatment of the work has been prejudicial to his honour or reputation. The revised Section 57 corresponded to Article 6bis of the Berne Convention and also provided that failure to display a work, or to display it in accordance with the wishes of the author, would not qualify as a violation of the author’s moral rights.

¹ Independent Advocate.

² 2005 (30) PTC 253 Del.

In light of this amendment in 1994, an important question that Justice Nandrajog needed to address was that of which law would be applicable to the final ruling, the pre amendment or post amendment Copyright Act. There were compelling arguments for both the sides, as the old provisions of the Copyright Act would apply because they governed the time when the acts of destruction occurred, and when the case was actually filed before the court. On the other hand, he could have said that the post amended provisions should apply because they reflected the currently policy of the Govt. and were actually in force at the time of the judgment. However, he sidestepped the question and chose neither of the paths, arguing that the law must be read to fulfil the higher objective of protecting our cultural heritage, in light of the many international treaties on cultural heritage that India is a signatory to. The artwork in question constituted an ‘outstanding work of art’ and in such cases there is an overriding obligation to protect their integrity, no matter which law is applied.

Keywords: moral rights, artist, mural, copyright, artistic works, berne convention.

FACTS IN BRIEF

Back in 1959, the Ministry of Works, Housing and Supplies of the Union Government of India commissioned a talented sculptor, Amar Nath Sehgal, to design a mural. The work was to adorn the walls around a central arch of the Vigyan Bhawan, a venue for important government functions in the capital city. The design was given the green flag by the first Prime Minister of India, Pandit Jawahar Lal Nehru, and the mural was completed in 1962. In its final shape, it measured a mammoth 40 feet high and 140 feet long.

The mural won widespread acclaim and gave the world a glimpse of the ‘real’ India – its farmers, artisans, women and children, their daily chores and celebrations, frozen in time, and molded from tons of solid bronze. For nearly 20 years the mural attracted dignitaries and art connoisseurs from all over the world. It became a landmark in the cultural life of the capital.

Then the Vigyan Bhawan buildings were renovated. In the process, the mural was ripped off the walls and the remnants put into store.

Distressed by the destruction of his artistic work, and after petitioning the authorities for years without a response, Mr. Sehgal brought a lawsuit against the government for violation of his moral rights. Specifically, he claimed that:

- the dismemberment of the homogeneous blend of the pieces of each tile in the mosaic constituted an act of mutilation;
- the Ministry's action was prejudicial to his honor and reputation as an artist, because, by reducing the mural to junk, it dealt a body blow to the esteem and celebrity bestowed on the work at its inception;
- the obliteration of his name on the work violated his right to claim authorship.

Though too late to rescue the mural by the time his grievance came to court in May 1992, Mr. Sehgal was nonetheless granted an interim injunction restraining the defendants from causing further damage to the work. By a quirk of fate, the presiding Judge was himself an art aficionado with, literally, a flair for poetic justice. The restraining order handed down by Justice Jaspal Singh came across as an acutely empathetic one:

"Sometime in the year 1962, the barren walls of Vigyan Bhawan were blessed with a mural...created by the magic hands of eminent sculptor Amar Nath Sehgal, approved by connoisseurs of all that is beautiful ... For years, it was dance to the discerning eye, and song to the ears who could hear. However, in 1979, it was pulled down and dumped in a storehouse. It is said that improper handling caused immense damage, and that bits and pieces have altogether disappeared, including the name of its creator... In a country rightly proud of its creativity and ingenuity, men who can hardly distinguish the heads of Venus from those of Mars cannot be allowed to decide the fate of artists who create our history and heritage. The cry is: Ils ne passeront pas! and in such a situation Indian court will always be found dynamic and responsive."

ISSUES

- 1) Whether or not the suit is barred by limitation?
- 2) Whether or not the plaintiff has rights under Section 57 of the Copyright Act, 1957 in the impugned work although the copyright in the same has been vested to the defendant?
- 3) Whether or not has the defendant violated the plaintiff's rights under Section 57 of the said Act?
- 4) Whether or not the plaintiff has suffered any damage?
- 5) Whether or not the relief sought by the plaintiff would be awarded by the court?

RULES APPLIED

Article 6 of the Berne Convention For the Protection of Literary and Artistic Works reads:-

"(1)Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

(2)The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed."

Section 57 of Copyright Act, 1957 (amended 1995)

"57. Author's special rights. -(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 the 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 which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation.

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.

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of ownership of Cultural Property, 1970, India is a signatory. Preamble reads:

"Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations, Considering that as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles".

Article 1 and 4 of the Convention read:

"Article 1 For the purposes of this Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

g. property of artistic interest, such as:

i. pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactures articles decorated by hand);

ii. original work of statuary art and sculpture in any material;

iii. original engravings, prints and lithographs;

"Article 4 The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

a. Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;"

ANALYSIS

Copyright is one of the three main branches of the traditional law of intellectual property, along with patent law and trade mark law. Plaintiff's pleadings takes one back to the year 1957. India was a nascent democracy. Pt. Jawahar Lal Nehru, the first Prime Minister of this country. Fledgling India was asserting itself in the community of nations. International delegations were frequenting the territory of India. Conferences had to be held. Large number of delegates had to be

accommodated. A building was conceived to be the hub of international and national conferences. It was named "Vigyan Bhawan".

It was decided that this building must be endowed with the cultural heritage of India. Plaintiff, Amar Nath Sehgal, was given the task to make a wire sculpture on the inside of the external walls of the foyer on the ground floor.

Research and untiring work, spanning over half a decade produced a piece of art - a bronze mural sculpture - manifesting itself having 140 ft. span and 40 ft. sweep on the lobby of Vigyan Bhawan i.e. the entrance. The mural was a delicate balance between cultural and material aspects in national perspective and science of rural and modern India being its theme.

The mural continued to occupy its place of pride at the lobby of Vigyan Bhawan till it was pulled down and consigned to the store room of the Union of India in the year 1979. This act of destruction of the mural was without the permission, consent or authorization of the plaintiff. According to the plaintiff, the mural acquired the status of a national treasure, representing the essential part of Indian art heritage. According to the plaintiff, the mural became an important part of India's cultural heritage.

The mural having been put in the godown of the Government of India. It is said that improper handling caused immense damage and that bit and pieces have altogether disappeared including the name of its creator. The plaintiff was left with no alternative, but to file a suit. Taking shelter of Section 57 of the Copyright Act, 1957, the suit prayed for declaration that the plaintiff's special rights under Section 57 of the Copyright Act, 1957 were violated by the defendants, for which the defendants should tender an apology. A permanent injunction was prayed for to restrain the defendants from further distorting, mutilating or damaging the plaintiff's mural. Damages in the sum of Rs.50 lacs towards compensation for humiliation, injury, insult and loss of plaintiff's reputation were prayed for. Lastly, decree for delivery-up directing the defendants to return to the plaintiff the mural for restoration at the cost of defendants was sought.

Union of India defended the suit by urging that it was the owner of the mural and had a right to consign the same to a store room. Plaintiff was stated to have been paid the price for the work. The defense of limitation was also set up. It was averred that the mural was removed in the year 1979

and the suit being filed in the year 1992 i.e. after 13 years from the date of the offending act, was barred by limitation.

In the replication, plaintiff pleaded that since suit was one for violation of his moral rights which would last for his lifetime and having not waived the same, suit could not be said to be barred by limitation. Further, it was pleaded that after the mural was removed, plaintiff approached various functionaries of the Government of India for redressal and at no stage the government of India unequivocally refused the claim of the plaintiff of having moral rights in the integrity of the mural. It was non-redressal which led to the filing of the suit.

Evidence on record establishes that till as late as 6.6.1991, Government of India acknowledged the fact that the mural needed respect evidenced, by a letter, addressed by Ms. Indrani Sen, Joint Secretary, Government of India, to the plaintiff. The letter reads as under:-

“We have examined the issue and feel that the mural can be re-installed in the Vigyan Bhavan annexe in any location of your choice. I have also physically seen the dis-mantled mural. While it is true that at present the mural is merely dumped in a store but the pieces are largely in-tact and are not damaged.”

Limitation would accordingly run after 6.6.1991 as till that date, defendants expressed willingness to restore the mural but did not put to action their commitment. Issue No. 1 is accordingly decided in favor of the plaintiff and against the defendants. It is held that the suit is within limitation.

Evidence on record clearly brings out the celebrity status of eminence enjoyed by the plaintiff in the field of art and culture. The author has a right to preserve, protect and nurture his creations through his moral rights.

When an author creates a work of art or a literary work, his first and foremost right is the "Paternity Right" in the work, i.e. the right to have his name on the work. It may also be called the 'identification right'. The second right is the right to disseminate his work i.e. the 'divulgence right'. It would embrace the economic right to sell the work or valuable consideration. Linked to the paternity right, a third right, being the right to maintain purity in the work. There can be no purity without integrity. Treatment of a work which is derogatory to the reputation of the author, or in some way degrades the work as conceived by the author can be objected to by the author. This would be the moral right of "integrity". Lastly, is right to withdraw from publication ones work, if

author feels that due to passage of time and changed opinion it is advisable to withdraw the work; authors right to "retraction".

The community of nations set the International Standards for moral rights protection of the author under the 'Berne Convention For the Protection of Literary and Artistic Works'. Since its inception in 1886, the Berne Convention has been the primary instrument of International Copyright Law. Article 6bis of the Berne Convention enjoins the members of the Berne Union to provide legal recognition for the moral rights of attribution and integrity in a work in which copyright exists.

The moral rights set out in the Berne Convention are significant because they continue to be vested in the author even after he has parted with his economic rights in his work. The right of the author under Article 6bis of the Berne Convention provides that an author may 'object to any distortion, mutilation or modification' of his work which is deemed to be 'prejudicial to his honour or reputation'. And enables the author to seek appropriate legal remedies if the moral right of attribution and integrity in his work is violated.

It is argued by some that where a work is destroyed, since it no longer exists and cannot therefore be viewed by anyone, where is the occasion for prejudice to the authors reputation. Per contra, it could be argued that destruction of a work can prejudice an author's reputation by reducing the volume of his creative corpus. The derogatory treatment of a creative work would mean deletion to, distortion, mutilation or modification to, or use of the work in a setting which is entirely inappropriate- as is the situation in this case.

In conformity with the Berne Convention, Section 57 of the Act protects the author's right of paternity as also the right of integrity. Distortion, mutilation or modification if established to be prejudicial to the author's reputation or honour are actionable as it violate the author's special rights.

The mural sculpture decorating Vigyan Bhawan, is the result of plaintiff's creative effort. It has not only enhanced plaintiff's celebrity, but has also attained the status of a modern national treasure of India. There is a need to interpret Section 57 of the Act 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 prejudicially as being actionable under said section. Further, in relation to the work of an author, subject to the work attaining the status of a modern national treasure, the

right would include an action to protect the integrity of the work in relation to the cultural heritage of the nation.

Under orders passed by this Court, physical condition of the mural was directed to be reported. Shri B.C. Sanyal, an artist of international repute and professor P.N. Mago reported that various parts were missing. Their report reveals a massive destruction of the mural.

STAGES OF THE TRIAL

The defense objected at the outset to the power of the court to intervene in the matter. Confident that the ministry was within its legal rights, it argued that:

- the plaintiff had assigned his copyright to the defendant (the government) in an agreement dated 31st October 1960;
- the defendant had purchased all rights from the plaintiff, and was consequently free to do as it pleased with the mural;
- the mural had already been damaged in a fire in the Vigyan Bhawan;
- according to the terms of the 1960 agreement, any grievance should be referred to an arbitrator appointed by the defendant.

In the second round of the battle, the Judge held in Mr. Sehgal's favor by dismissing the defendant's application to refer the dispute to arbitration. The decks were then clear for the case to go to trial, though not before further months were spent in unsuccessful efforts to find a mutually acceptable solution which Mr. Sehgal felt would vindicate his honour and reputation.

Evidence was led, and the matter came up for final hearing. In the third key decision, Justice Pradeep Nandrajog of the Delhi High Court ruled that: "All rights of the mural shall henceforth vest with Mr. Sehgal." The court ordered the return of the remains of the mural to the sculptor, and also slapped damages of Rs.500,000 (some US\$ 12,000) on the defendant.

But the fight was still not quite over. The decree was not fulfilled, and Mr. Sehgal again took recourse to the court in execution proceedings, while the defendant appealed against the decree to a division bench of the court. Ultimately, the matter was amicably resolved. After the hard fought

and emotional battle, Mr. Sehgal, grateful for his victory, waived the claim of damages against the government in exchange for the return of the mural.

CONCLUSION

Issues No. 2 and 3 are accordingly decided in favor of the plaintiff and against the defendants. It is held that the plaintiff has a cause to maintain an action under Section 57 of the Copyright Act, 1957 notwithstanding that the copyright in the mural stands vested in the defendants. It is further held that the defendants have not only violated the plaintiff's moral right of integrity in the mural but have also violated the integrity of the work in relation to the cultural heritage of the nation.

Issues 4 and 5 At the hearing, a decree directing the defendants to return to the plaintiff the remnants of the mural with further declaration that the defendants would have no right in the same as also a declaration that the plaintiff would have a right to recreate the mural at any other place anywhere in the world including the right to sell the same. Alternatively, damages were sought.

It is only the plaintiff who has a right to recreate his work and, therefore, has a right to receive that the broken down mural. Plaintiff also has a right to be compensated for loss of reputation, honour and mental injury due to the offending acts of the defendants.

Suit is accordingly decreed in favor of the plaintiff as under:-

- (a) A mandatory injunction directing the defendants to return to the plaintiff the remnants of the mural.
- (b) Declaration that all rights in the mural shall henceforth vest in the plaintiff and the defendants would have no right whatsoever in the mural.
- (c) Declaration is granted in favor of the plaintiff that he would have an absolute right to recreate the mural at any place and would have the right to sell the same.
- (d) Damages in the sum of Rs.5 lacs (around \$12,000) are awarded in favor of the plaintiff.

PROTECTING THE SOUL OF ARTISTIC EXPRESSION

At the outset, the odds had appeared to be stacked heavily against the artist. Not only had he created the work on commission, but he had also explicitly assigned his copyright – and so all economic rights - to the commissioning ministry. He faced a powerful opponent.

Amar Nath Sehgal won his civil law action thanks to the single statutory provision on "author's special rights" in Section 57 of the Indian Copyright Act (1957). Based on the Berne Convention Article 6bis, this codifies the concept of moral rights, by protecting an author's right, independent of his copyright, to claim to authorship of his work, and to restrain any distortion, mutilation or modification of the work which could be prejudicial to his honor or reputation.

It is worth reflecting that, had the mural had been completely destroyed, it is unlikely that Mr. Sehgal would have obtained the same relief, particularly given the long gap between the removal of the mural and the institution of the legal proceedings. The court's decision was influenced by the fact that the stored remnants were still redeemable, and that, on viewing them, the court could visualize the magnitude of the work.

The fact that the defendant was the government was also significant. One of the arguments that appealed to the court was that, unlike a private owner of an artwork, the Indian government had an obligation to protect, preserve and respect cultural rights and the country's artistic and cultural heritage. This was enshrined in the national 2002–2007 Five Year Plan. Extracts from UNESCO's non-copyright cultural conventions also helped create a link between the facts of this case and governmental obligations.

The case of Amar Nath Sehgal's mural throws into relief the importance of the Section 57 provision of the Indian Copyright Act, and of the weight it has been accorded by courts in India. It also gives reason to thank the wisdom of those who resolved, all those years ago, that there should be a higher law to protect the soul and essence of artistic expression as much as – or more than – the physical or tangible form of that expression.