

Reserved**Writ Petition No. 746 of 1986 (MB)**

Mohd. Hashim

Petitioner

Versus

1. District Judge, Faizabad,
2. Umesh Chandra Pandey,
3. State of U.P. through Collector, Faizabad,
4. Deputy Commissioner, Faizabad,
5. City Magistrate, Faizabad,
6. Superintendent of Police, Faizabad,
7. Nirmohi Akhara,
8. Farooq AhmadOpposite Parties

Connected with**Writ Petition No. 3106 of 1986**

U.P. Sunni Central Board of Waqf,Plaintiff
 91, Dr. Motilal Bose Road, Lucknow
 through its Secretary

Versus

1. District Judge, Faizabad,
2. Umesh Chandra Pandey,
aged about 28 years, son of Sri Ram
Shanker Pandey, R/o Ranupali, Town Ayodhya,
Pergana Haveli Avadh, Tahsil and
District-Faizabad.
3. State of U.P. through Collector, Faizabad,
4. Deputy Commissioner, Faizabad,
5. City Magistrate, Faizabad,
6. Superintendent of Police, Faizabad,Opposite Parties

Hon'ble Dharam Veer Sharma, J.

Writ Petition No. 746 of 1986 has been filed with the following reliefs;

- (I) "To issue a writ, direction or order in the nature of certiorari or any other writ, order or direction quashing the orders, passed by opposite party no.1 dated 1.2.1986, contained in Annexures Nos. 5 and 6 to the writ petition;
- (II) To issue a writ of mandate commanding opposite parties nos. 3 to 6 to maintain strictly the sanctity of the disputed premises and preserve the same prohibiting the opposite party no.2 and also others from disturbing the sanctity and preservation of the religious place;
- (III) Any other writ, order or directions which may be deemed just and proper in the circumstances of the case may also be passed and issued in favour of the petitioner and against opposite parties; and
- (IV) The writ petition be allowed with costs."

The facts giving rise to the petitions are as under;

The petitioner heard a rumour in the city that some orders are likely to be passed regarding opening of the gates of Babri mosque from the Court of District Judge, Faizabad. Thereafter he engaged a counsel and came to know that some application was moved in Regular Suit No. 2 of 1950, which has already been transferred to this Court and the judgment is reserved. It transpires that some application was moved in the Court of Munsif, Faizabad and against the order, passed by the learned Munsif the appeal was preferred before the District Judge, which was registered as Civil Misc. Appeal No. 8 of 1986. It appears that in the night between 22/23-12-1949 idols were placed inside the disputed structure and the property was attached under Section 145 Cr.P.C. and was given in the custody of one Priya Dutt Ram. Thereafter Regular Suit No. 2 of 1950 was filed in the

Court of Civil Judge by one Gopal Singh Visharad and against five Muslims and thereafter another suit being Suit No. 25 of 1950 was filed by one Param Hans Ram Chandra Das against the five persons along with State of U.P. In the year 1959 third suit was filed by Nirmohi Akhara, which was registered as Regular Suit No. 26 of 1959. Aforesaid suit was also contested. The matter having prolonged for the decades a suit being Regular Suit No. 12 of 1961 was filed by Sunni Central Board of Waqfs, Lucknow, which in the representative capacity is OOS No. 4 of 1989 pending in this Court. It was directed by the Court that Pooja would continue and Receiver Priya Dutt Ram will continue to hold the charge. In the meantime, Priya Dutt Ram died and thereafter Sri K.K.Raam Verma was appointed as a Receiver. It further transpires that an application was moved to open the locks of the gates in the Court of Munsif, Faizabad, who passed an order. Against the order, passed by the Munsif, Faizabad, an appeal was filed before the District Judge, Faizabad. That on 1.2.1986 at about 1 p.m. The petitioner applied to remain present in the proceedings and he should be impleaded as a respondent. Thereafter the petitioner moved another application before the District Judge. In the meantime, opposite party no.1 asked the parties to appear at 4.14 p.m. The opposite party no. 1 rejected the application for impleadment and pronounced the judgement. According to the petitioner, rejection of the application is not proper. The order, passed by the District Judge, is without jurisdiction. Annexure No. 6, the order speaks that every body is free to enter into the premises. The order is bad in the eye of law for the following reason;

The application moved by opposite party no. 2 was not entertained and the appeal was not maintainable and the learned Munsif has not passed any final order. After 36 years mandatory

injunction could not be granted altering the situation, which would cause irreparable injury to the petitioner as well as other Members of the Muslim Community. The property being custodia legis, hence position could not be altered.

On behalf of the opposite parties no. 3 to 6, a joint counter affidavit has been filed stating that premises is intact and district administration is keeping constant vigil and watch over the disputed structure. They have denied the averments of the petition.

On behalf of Param Hans Ram Chandra Das objections have been filed stating that the suit for declaration is barred by limitation and the petitioner has no lis in the matter. The petition is liable to be dismissed.

It transpires that the District Judge, Faizabad on 01.02.1986 dismissed the application for impleadment of Mohd.Hashim after considering the objections filed against the above application. It was contended on behalf of the appellants that respondents have already been arrayed as a party and the impleadment of Mohd.Hashim is not necessary in this case and he is not a necessary party and against whom the appellants are not seeking any relief against him.

It is further submitted on behalf of the appellants that even if the relief is granted it would not affect Mohd.Hashim. The learned District Judge took the view that contention appears to be correct.

After considering the pros and cons of the matter it transpires that the plaintiffs applied for interim injunction which was granted by the Court below and defendants were restrained from removing the idols in question from the site in dispute and the Pooja was allowed. It has been submitted by the appellants that the officers of the State Government are not acting in accordance with the spirit of the injunction order. In this case, Mohd. Hashim sought intervention and

moved the application that he should also be arrayed as a party. In this context, it appears that the appellant has not sought any relief against him nor he is affected party. Accordingly, he cannot be treated as a necessary party because in his absence the case can be decided. Who is a necessary party has to be seen in the light of the decision of the Hon'ble Apex Court in the case of Re: **Udit Narain Singh Malpahoria vs. Additional Member Board of Revenue Bihar, AIR 1963, SC 786.**

Learned District Judge has relied upon the case reported in **AIR 1959 Orrisa 31, K. Raja Gopal Rao Vs. Dolgobind Sahu and Another** and referred the relevant extract of the ruling which also goes to show that in case the appeal is allowed there would not be inconsistent decree in respect of the same litigation or in respect of the same subject matter. He has further relied upon **AIR 1924 Calcutta 456, Bhupendra Nath Mookerjee Vs. Monohar Mukerjee** and **AIR 1927 Privy Council 252, V.P.R.V. Chockalingom Chetty Vs. Seethai Ache and Others.**

Thus, on the basis of aforesaid rulings, I agree that since the appellant Mohd. Hashim is not going to be affected by the relief sought in the appeal, he is neither a necessary nor proper party and there is no occasion for the Court to presume that in his absence there would be any inconsistent order. Thus, vide order dated 1.2.1986 the impleadment application was rightly rejected by the District Judge and in the writ petition no. 746 of 1986 no interference is called for.

On behalf of U.P. Sunni Central Board of Waqfs, the order dated 1.2.1986 has been challenged by filing writ petition no. 3106 of 1986 on the ground that the District Judge has exceeded his jurisdiction and in case if the order is allowed to continue, it would be the abuse of the process of law.

I have heard the rival submissions of the parties, it transpires

that in Suit No. 2 of 50 appellant Umesh Chand Pandey filed an application to the effect that defendants no. 6 to 9 should be directed not to impose any restriction in the Pooja and Darshan of the applicant and other members of Hindu community and the premises in question be closed by locking the entrance gate.

Defendants no. 6 to 9 are State Officers. They stated that they had no intention to interfere in the Pooja or to flout the Court's order dated 3.5.51. It has further been submitted by them that idols installed in the disputed premises is visible from outside. Inside the gate there is an enclosure made of grills and in both the gates locks have been placed by whom is not within their knowledge and no record is available on this point that who had taken a decision to put the locks at the gates 'O' and 'P' but the priest is allowed to go inside performing the Pooja and Bhog through the gate 'O'. The lock of gate 'P' was never opened. It was submitted that for the last 35 to 40 years no members of the Muslim community has offered any Namaz or prayer and they were also not allowed to enter the place. There are certain idols also. District Magistrate further stated that there are other ways to protect idols in maintaining law and order besides closing the gates 'O' and 'P'. He clearly admitted that if the locks at the gates 'O' and 'P' are opened even then there are other ways to maintain peace and to protect the idols kept inside the premises. The S.S.P., Faizabad, Sri Karam Veer Singh also stated that it is not necessary to keep the locks at the gates for maintaining the law and order.

On behalf of the appellant, it was submitted that there was no necessity to create any artificial barrier by putting the locks at gates 'O' and 'P'.

After hearing the submissions of the parties, the District Judge took the view that members of other community i.e. Muslims are not

going to be affected even if the locks of gates 'O' and 'P' are opened as they are not entering in the premises and the premises is under the possession of Hindus for the last 35 years and they are offering prayer and worships of the idols. District Judge has also mentioned in his order that the locks were puts on the doors without any order and the district authority stated that there is no apprehension of law and order problem in case if the locks are removed.

In view of the circumstances referred to above, keeping in view the provisions of Order 39 as well as Section 151 C.P.C. the order was passed by the District Judge to this effect that there was no justification for retaining locks after the assurance given by the District Magistrate and the S.S.P. Faizabad, referred to above and he allowed the appeal. I have pointedly ascertained from the learned counsel for the appellant as to what is wrong with the order especially in the circumstances when property in dispute has already been demolished and after the demolition of the property in suit how the present writ petition no. 3106 of 1986 is maintainable and what relief can be granted even if the writ petition is allowed and on what basis the locks can be kept at gates no.'O' and 'P' as has been done prior to the order dated 1.2.1986.

It is admitted between the parties that the disputed structure is not in existence, it has already been demolished. There is no place like door 'O' and 'P' at present.

Thus, at this stage, since the subject matter is not there, no direction can be issued to State Government to maintain the earlier order. However, after going through the order passed by the learned District Judge, it transpires that without any order the locks were put on door nos. 'O' and 'P', that too after the injunction order was passed by the civil court. District Judge insisted that District Authorities should inform him as to what was the cause and reason to lock the

doors. The S.S.P. and District Magistrate admitted that they had no objection in case the locks are opened. Thus, this is a case in which the order of the civil court was not complied with and against that order the doors were closed by putting the locks and the District Judge, by his order removed the locks for which there cannot be any grievance to anybody especially under the circumstances when the Muslims were not visiting the place for the last 35 years and they have also not disputed this fact as to how there would be any hardship to them. It is also admitted to Muslims that the property is in possession and control of the Hindu community. It has to be seen whether the possession is legal or illegal but at this stage, it is submitted that Hindus were in possession of the property. The balance of convenience is always with the person who holds the property. Accordingly, the property was kept under the control of Hindus and in whose favour injunction order was granted which was confirmed and subsequently affirmed even by this Court and it is not possible for this Court to recall any order or to pass any order inconsistent to the order passed by this Court. Consequently, the order of the District Judge is without any infirmity and requires no interference. It would not be justiciable for this Court also to pass any order in exercise of powers under Article 226 of the Constitution of India for the reason that the subject matter has already been demolished and the matter has become almost academic. Needless to say that the suit is pending between the parties and that has to be decided by this Court and in that case also the subject matter will be considered.

Vis-a-vis the sequence of the events referred to above, I am of the view that the petitioner, U.P. Sunni Central Board of Waqf is also not in a position to object the order passed by the District Judge for the reasons that they contested the case upto this Court and the order of

injunction became final and in pursuance of that order the District Judge passed the order in appeal pending before him. Thus, the writ petition no.3106 of 1986 also lacks merit.

In the result both the writ petitions fail and are hereby dismissed with no order as to costs.

30.09.2010)

Irfan/-