

Court No. 21
Reserved on 03.08.2010
Delivered on 30.09.2010

- (1) **Writ Petition No. 746 of 1986**
Mohd. Hashim Vs. District Judge, Faizabad & others

- (2) **Writ Petition No. 3106 of 1986**
U.P. Sunni Central Board of Waqf, Lucknow Vs. District Judge, Faizabad & others

Hon'ble S.U. Khan, J.

Hon'ble Sudhir Agarwal, J.

Hon'ble D.V. Sharma, J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. Heard Sri Jafaryab Zilani, Sri M.A. Siddiqui, Sri Qamar Ahmad and Sri Irfan Ahmad, learned counsels for the petitioners and learned Addl. Chief Standing Counsel appearing for State-respondents.
2. These two writ petitions have been filed against the common order dated 1st February, 1986 passed by the District Judge, Faizabad in Civil Appeal No. 8 of 1986, whereby, while allowing the appeal, he has directed respondents to open the locks of the Gate 'O' and 'P', not to impose any restriction or hurdle in *Darshan, Pooja* of the applicant and other members of the community in general. It, however, has left the respondents with liberty to take independent decision to control law and order situation according to the need and situation and to regulate the entry of pilgrimages. Writ Petition No. 746 of 1986 (hereinafter referred to as the 'first petition') has been preferred by Mohd. Hashim, son of Karim Bux and another one, Writ Petition No. 3106 of 1986 (hereinafter referred to as the 'second petition') is by Sunni Central Board of Waqf.

3. The genesis of dispute is in age old confrontation between the members of two communities at Ayodhya relating to a site, which the Muslims claim to be a Mosque (Babari Masjid) while Hindus claim it to be the site of birthplace of Lord Rama. It appears that a suit was filed by One Gopal Singh Visharad, being Suit No. 2 of 1950, in the Court of Civil Judge, Faizabad wherein an interim order was passed on 16th January, 1950 directing the parties to maintain *status quo* and the defendants in the suit were restrained from interfering in the *Pooja, Darshan* and worship of idols at the site in dispute. It further appears that earlier a first information report was lodged on 23rd December, 1949 by a Police Constable that in the night of 22nd/23rd December, 1949, idols were kept in the building of the alleged mosque and a lot of Hindu people gathered and started worship which was likely to disturb the public tranquility. The district administration immediately took preventive measures so much so that the City Magistrate on 29th December, 1949 passed a preliminary order under Section 145 Cr.P.C. attaching the building as well as *Sehan* in front thereof divided by a partition wall. The partition wall had two gates which were directed to be locked and the possession of the attached property was handed over to a Receiver, Sri Priya Dutt Ram. The said attachment and charge of the property under attachment with the Receiver continued after the interim injunction order granted by the Civil Judge who also directed the City Magistrate and Receiver to ensure regular *Pooja* of the idols inside the disputed structure.

4. It appears that on 25th January, 1986, an application was filed before the Munshif, Faizabad in Regular Suit No. 2 of 1950 praying for issuing a direction for opening the locks of Gate 'O' and 'P' so that the people may have *Darshan* of idols without any obstruction.

The learned Munshif passed order on 28th January, 1986 observing that the record of the leading case being in the High Court, no order can be passed. He, however, directed that the application be put up for further orders on the date fixed.

5. It is this order whereagainst appeal no. 8 of 1986 was filed by the applicant Umesh Chandra Pandey whereupon the impugned order was passed by the learned District Judge.

6. Entertaining the first writ petition, on 3rd February, 1986 Hon'ble Brijesh Kumar, J. (as His Lordship then was), while issuing notices to the respondents, passed an interim order to the effect that until further orders of the Court, nature of the property in question, as existing on that date, shall not be changed.

7. The writ petition is pending for the last more than 24 years. This is really unfortunate that these writ petitions could not have been heard and decided for the last 24 years. In the meantime, much water has flown, inasmuch, the original suit pending in the Court of Civil Judge (Junior Division), i.e., Munshif at Faizabad, along with some other suits were transferred to this Court by order dated 10th July, 1986 and, thereafter a Special Bench of three Judges was constituted to hear and decide all these suits. Several attempts were made at various levels to pursue the parties for an amicable settlement of dispute which had charged the otherwise calm and peace of the country on the lines of religious fervor and emotions so much so that even the building in dispute was demolished on an unfortunate but eventful day of 6th December, 1992, in a most barbaric and shameful manner, ignoring the fact that the Court at the highest level in the State as well as even the Apex Court were seized of the matter in one or the other manner and were trying to settle the issue earnestly and with due seriousness.

8. It is also worthy to mention at this stage that after recording of evidence etc. the final hearing of all these suits, including the suit in question wherein the impugned order has been passed, was going on and finally the judgment was reserved on 26th July, 2010.

9. Sri Jilani, learned counsel for the petitioners, vehemently contended that the manner in which the learned District Judge has passed the impugned order, that too on an application of a stranger, who was not even a party in the suit. without affording any opportunity to the petitioners, is wholly illegal and amounts to the grossest error on his part. Therefore, this Court should decide these writ petitions on merits considering his submissions.

10. It is no doubt true that this Court, whenever finds a wholly illegal order, which has been passed by a subordinate Court, never hesitate in exercising its power to set the things right, but we also cannot be oblivious of the fact that the order, impugned in these writ petitions, is an interlocutory order and, for whatever reason, lived its life for the last 24 years. The interlocutory order cannot claim a life beyond the original proceedings wherein such an order has been passed. Since the original suit wherein the interlocutory order was passed, itself has been decided by us today, we do not find it expedient to issue a futile writ in a matter which has rendered infructuous as a result of final adjudication of the original suit itself wherein the impugned order (interlocutory order) was passed.

11. We, therefore, refrain ourselves from expressing any opinion on the merits of the matter and, in the changed facts and circumstances of the case, and particularly considering the fact that the Original Suit No. 2 of 1950 (now numbered as Other Original Suit No. 1 of 1989) itself has been decided finally by us vide judgment of date, we do not find any occasion to pass any further

order in these writ petitions, since the same have rendered infructuous.

12. Both the writ petitions are, accordingly, dismissed.

Dt. 30.09.2010

PS