

ITEM NO.44+32 COURT NO.1 SECTION PIL-W Revised

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 1246/2020

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

WITH

W.P.(C) No. 559/2020 (PIL-W)

(FOR ADMISSION and I.R. and IA No.54129/2020-EXEMPTION FROM FILING O.T. and IA No.54990/2020-INTERVENTION/IMPLEADMENT and IA No.54131/2020-APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT)

W.P.(C) No. 619/2020 (PIL-W)

(FOR ADMISSION and IA No.57771/2020-PERMISSION TO APPEAR AND ARGUE IN PERSON)

W.P.(C) No. 782/2022 (PIL-W)

(FOR ADMISSION)

Item 32

Writ Petition(s)(Civil) No(s). 827/2022*

Date : 12-10-2022 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE AJAY RASTOGI

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s)

Ms. Vrinda Grover, adv.

Mr. Ejaz Maqbool, AOR

Mr. Shahid Nadeem, Adv.

Ms. Akriti Chaubey, Adv.

Mr. Saif Zia, Adv.

Mr. Rakesh Dwivedi, Sr. Adv.

Mr. AshwaniKr. Upadhyay, Adv.

Mr. Ashwani Kumar Dubey, AOR

Ms. Asha Upadhyay, Adv.

Ms. Monika Dwivedi, Adv.

Mr. Eklavya Dwivedi, Adv.

Mr. Arya Tripathi, Adv.

Mr. Aditya Sharma, Adv.

For Respondent(s)

Ms. Vrinda Grover, adv.
Mr. Ejaz Maqbool, AOR
Mr. Shahid Nadeem, Adv.
Ms. Akriti Chaubey, Adv.
Mr. Saif Zia, Adv.

Mr. Aman Sinha, Sr. adv.
Mr. Abhishek Chauhan, Adv.
Mr. H.B. Dubey, Adv.
Ms. Rajshri Dubey, Adv.
Mr. Amit P. Shahi, Adv.
Mr. Amit Kumar, Adv.
Mr. Pravesh Thakur, Adv.
Mr. Ashutosh Dubey, AOR

Mr. Shariq Ahmed, Adv.
Mr. Talha Abdul Rahman, Adv.
Mr. Tariq Ahmed, Adv.
Mr.D.K. Thakur, Adv.
M/S. Ahmadi Law Offices, AOR

Dr. A.P. Singh, Adv.
Ms. Geeta Chauhan, Adv.
Mr. V.P. Singh, Adv.
Ms. Pratima Ravi, Adv.
Ms. Richa Singh, Adv.
Mr. Sadashiv, AOR

Ms. Sonia Mathur, Sr. Adv.
Mr. Chandra Shekhar, Adv.
Mr. Nirmal Kumar Ambastha, AOR
Mr. Simarjeet Singh Saluja, Adv.
Mr. Nikhil Chandra Jaiswal, Adv.
Ms. Pratiksha Mishra, Adv.

Mr. P.B. Suresh, Adv.
Mr. Vipin Nair, Adv.
Mr. Karthik Jayshankar, Adv.
Mr. Anindam Ghosh, adv.
Mr. Manan Sangai, Adv.
Mr. Vishnu Shankar Jain, AOR

Mr. V.K. Shukla, Sr. Adv.
Mr. Rakesh Mishra, AOR.
Mr. Alok Kumar Pandey, Adv.
Ms. Kiran Pandey, Adv.
Mr. Shiv Ram Pandey, Adv.
Ms. Sandhya Pandey, Adv.

Mr. J Sai Deepak, Adv.

Mr. V. Shyamohan, Adv.
Mr. Akshat Gogna, Adv.
Mr. Shakti, Adv.
M/S. Kmnp Law Aor, AOR

Mr. B.L. Hansaria, Sr. Adv.
Mr. Bijan Kumar Ghosh, AOR
Mr. Ujjawal Banerjee, Adv.
Mr. Birendra Bikra, Adv.

Mr. Dhawal Uniyal , AOR
Mr. Harsh Chandela, Adv.

Mr. Sarim Naved, Adv.
Mr. Kabir Dixit, AOR
Mr. Imroz Alam, Adv.
Mr. Kamran Javed, Adv.
Ms. Bharti Tyagi, AOR

Mr. Aruneshwar Gupta, Sr. Adv.
Mr. Rajeev Singh, AOR
Mr. Abhishek Sharma, Adv.

Mr. Aman Sinha, Sr. Adv.
Mr. Maurya Vijaya Chandra, Adv.
Mr. Atulesh Kumar, AOR
Mr. Pravesh Thakur, Adv.
Mr. Raman Kr. Bharti, Adv.

Mr. Yusur H. Muchhala, Sr. Adv.
Mr. M. R. Shamshad, AOR
Mr. Arijit Sarkar, Adv.
Ms. Nabeela Jamil, adv.
Mr. Aditya Sharma, AOR

Mr. Shiv Sagar Tiwari, AOR
Mr. Ashutosh Bansal, Adv.

Mr. Nishe Rajen Shonker, AOR (kerala)
Mr. Anu K. Joy, Adv.
Mr. Alim Anvar, Adv.

Dr. Subramanian Swamy, Petitioner-in-person
Mr. Satya Sabharwal, Adv.
Mr. Vishesh Kanodia, Adv.

Mr. Barun Kumar Sinha, Adv.
Ms. Pratibha Singh, Adv.
Ms. Mudit Kaul, Adv.
Mr. Abhishek, AOR

UPON hearing the counsel the Court made the following
O R D E R

Issue notice in all the matters.

I

Mr. Rakesh Dwivedi, learned Senior Advocate appearing in Writ Petition (C) No.1246/2020 has formulated following questions, which in his view arise in these matters:

"1.Whether the parliament was legislatively competent to enact the Places of Worship (Special Provision) Act, 1991 ("act hereinafter") in as much as in pith and substance, the Act deals with subject matters mentioned in the State List (List-2) of 7th Schedule of the Constitution, namely, "Public Order" (Entry-1, List-2), 'Pilgrimage Entry-7, List-2), Land (Entry-18, List-2), Religious Societies, (Entry-32, List-2), Offences with respect to matters in List-2, Entry-64 List-2, Jurisdiction and Powers of Court (Entry-65, List-2) which are all in the Exclusive domain of the State Legislatures?

2.Whether the Act is violative of Article 14 in as much as it discriminates in a hostile manner by restricting the operation of the Act to all States other than the State of J&K and thereby allowing the litigations relating to the places of worship to be continued and instituted in the State of J&K, while imposing a bar on the same with respect to all other States without any rational justification or nexus to the object of communal harmony and peace?

3.Whether the bar of conversation of places of worship imposed by Section-3 read with Section 2(b) is violative of Articles 14, 21, 25, 26 and 29(1) of the Constitution in as much as it assumes, contrary to settled law relating to dedication of temple and temple property to the Idol, which never dies, that seeking reclamation or restoration of the temples destroyed by Muslim invaders, specially by Aurangzeb, would amount to seeking conversion of the place of worship and thereby putting an imprimatur on the destruction of the Hindu temples and the building of structures on the temple land for offering prayers by another community? Whether this would amount to depriving the temples and the Idols of their property without any public purpose and would violate Article-300A of the Constitution?

4. Whether the Cut-off date 15.08.1947 fixed by Section 4(1) of the Act is discriminatory and manifestly arbitrary and violative of Article 14, 21, 25, 26, 29(1) of the Constitution of India as for approximately 4 centuries prior to the said date the people of India were not free and subjects of initially the Mughal invaders and thereafter of British imperialists and were not in a position to seek retrieval and reconstruction and when independence was achieved by India on 15-08-1947 the said date has been chosen to silence the Hindus and prevent them from retrieving the rebuilding their prime temples and to undo the deprecatory destruction of those temples.

5. Whether the second part of section 4(2) which bars suits, appeals and other legal proceedings with respect to reclamation of place of worship is violative of article 14, 21, 25, 26, 29(2) in as much as it denies access to the Court of Justice for peaceful resolution of disputes and redressal of wrongs committed by Muslim invaders on religious grounds by use of force? Can such an absolute bar be created without creating any alternate forum for settlement of such disputes for in its absence the Basic Feature of Rule of Law and Judicial Review would stand destroyed.

6. Whether Section 4(2) of the Act is violative of Articles 14, 21, 25, 26 and 29 (2) of the Constitution in as much as it mandates the abatement of pending disputes in relation to place of worships in the Courts and thereby legislatively perpetuates the destructions of prime temples and the building of structures on the temple land by use of temple materials by the Muslim invaders by use of force resulting in adversely impacting the fundamental rights of Hindus to religion and worship.?

7. Whether the second part of Section 4 sub-section 2 aforementioned would envelop proceedings under Article 226 and Article 32, which is a fundamental right under the Constitution, for it is a settled law that legislatures have no power to shut out the operation of the said provisions embodying powers of judicial review. [(1997) 3 SCC 261, L Chandra Kumar; (2007) 2 SCC 1 I R Coelho].

8. Whether the proviso to Section 4(2) which allows suits, appeals and legal proceedings to continue whether conversion has taken place in the religious character of place of worship after 15.8.47 despite its potentiality to disturb public order, and breach communal harmony whilst shutting out litigations relating to conversions which took place in the past as a result of invaders atrocities amounts to hostile discrimination as between

two classes of litigation, and this has no relation to public order and communal harmony? Whether Section-5 of the Act makes invidious discriminations by treating Ram Janam Bhumi dispute as a "Class by itself" while excluding from the exemption prime temples like Kashi Vishwanath (One of the 12 Jyotirlingas) and Krishna Janm Sthan which are equally, if not more, important temples whose destruction by invaders is more soundly evidenced and recorded in history and therefore violates Articles 14, 21, 25, 26 and 29(1)?

9. Whether the abatement of pending suits and other legal proceedings would result in a decision of cases by legislative fiat and without following any procedure of adjudication and would be contrary to basic feature of Rule of Law and Judicial Review as held in Indira Gandhi vs. Raj Narain [(1975) Supp SCC 1]? Whether the right to worship, profess, practice and propagate religion and manage religious affairs guaranteed by Articles 25(1) and 26 of the Constitution and the right to conserve one's own culture guaranteed by Articles 25(1) would include the right to reclaim and reconstruct temples (which are a continuity) destroyed by Muslim invaders and that could be trampled upon legislatively in the name of public order and communal harmony? Whether such perpetuation and continuance of desecration would actually result in resort to violence and communal disharmony by the blocking of access to Courts for peaceful resolution?

10. Whether suits seeking restoration and reconstruction of or for worship in the temples destroyed and demolished by the Mughal invaders would amount to "conversion" within the meaning of the term as defined in the Act? Whether the aforesaid issues can be said to be already decided or covered by the judgment of this Court in M. Siddiq (D) Thr. Lrs. vs. Mahant Suresh Das and Ors., CA Nos. 10866-10867 OR are they Res Integra?

11. Whether doctrine of non-retrogression has been correctly applied in Siddique [(2020) 1 SCC 1] and whether this doctrine enunciated and applied by US SC [SCOTUS] is at all applicable under our Constitution."

Ms. Aman Sinha, learned Senior Advocate submits that following two additional questions would also be required to be considered:-

"1. Destruction of temples was a historical injustice on generations of Hindus perpetrated by then ruling elite such as Aurangzeb and Places of Worship Act,

1991 even forecloses the possibility of remedying this injustice which is contrary to our constitutional scheme which recognizes the need to remedy this generation injustice.

Affirmative action to historically disadvantaged is a basic thread which runs through the constitution and is evident in affirmative action to historically oppressed and disadvantaged groups such as SC/ST/Women as reflected in Articles 15,16, 17 & Article 243d of the Constitution of India. However, the Places of Worship Act, 1991 runs absolutely contrary to this concept of intergenerational Justice and instead of providing intergeneration justice it perpetrates intergenerational injustice among Hindus.

Considering the huge number of hindu temples which were barbarically demolished this issue is connected to the collective identity of Hindus and their fundamental right to assert their religious identity as guaranteed under Article 25 of the Constitution and Places of Worship Act, 1991 is an affront to this collective identity of Hindus.

2. Places of Worship Act, 1991 is a completely colourable piece of legislation garbed as a secular enactment but directed towards Hindus. There is little or no example to my knowledge where an original Muslim place of worship is demolished by Hindus prior to 15th August, 1947 or even thereafter, therefore this is a totally colorable piece of legislation which runs contrary to basic structure of the Constitution of India."

II

On the last occasion, Mr. Tushar Mehta, learned Solicitor General had prayed for time to place his submissions on record by way of an affidavit in response. Learned Solicitor General prays for further time of two weeks to do the needful. Let the affidavit in that behalf be filed on or before 31.10.2022.

III

Ms. Vrinda Grover, learned Advocate submits that after the response is so filed by the learned Solicitor General, she would also respond and/or suggest additional questions that may be required to be considered.

Ms. Vrinda Grover, learned advocate and any other learned counsel who wishes to place additional questions may inform Mr. Kanu Agrawal, learned Advocate within seven days of the response.

We have requested Mr. Kanu Agrawal, learned Advocate to collate the questions and also file necessary documents by way of a compilation for facility.

IV

Mr. Agrawal shall share soft copies of such convenience compilation and the questions with all the learned counsel appearing for various parties.

V

After such questions are received by all the learned counsel, we request the learned counsel to file their written submissions not exceeding three pages indicating the time that may be required for the learned counsel to advance their submissions.

VI

Mr. P.B. Suresh, learned Advocate have suggested certain additional questions which may also be forwarded to Mr. Agarwal.

List for directions on 14.11.2022.

(INDU MARWAH)
COURT MASTER (SH)

(VIRENDER SINGH)
BRANCH OFFICER