

Naveed Yar Khan

Vs

State of Uttar Pradesh and Others

And

Mohd. Aslam Alias Bhure and Others

Vs

Union of India and Others

Writ Petition (Civil) Nos. 1000, 977 and 972 of 1991

15.11.1991

ORDER

1. The petitioners have approached this Court by way of these petitions under Article 32 of the Constitution as public interest litigations challenging the acquisition covered by two notifications dated October 7, and October 10, 1991 made under Section 4(1) of the Land Acquisition Act, 1894 under which certain property in Faizabad close to Ram Janmabhoomi-Babri Masjid Complex has been notified for acquisition for the purpose of development of pilgrimage and providing amenities to them at Ayodhya.

2. This litigation challenging the acquisition has already been entertained by the Allahabad High Court in its Lucknow Bench and is pending disposal. As an interim measure, the High Court has made an order on October 25, 1991, where the following directions have been made :

- (i) The State may take possession of the notified land and may make arrangements for the purpose notified in the notifications but no structure of permanent nature shall be put up thereon although structures of temporary nature may be put up.
- (ii) The taking over of possession shall be subject to further orders of the court; and
- (iii) The acquired land shall not be transferred or alienated.

3. It appears that on October 31, 1991, some people out of the crowd that had gathered there, forcibly entered into the shrine and hoisted saffron colour flags and later pulled down some old constructions on the outer wall of the shrine (a fact which is in dispute). In the petitions, several allegations have been made and petitioners have prayed that a writ of mandamus should be issued declaring the notifications of acquisitions as ultra vires, and for appropriate directions for handing over of the property back to the owners and for passing such other orders as are considered appropriate.

4. This issue relating to the mosque and the temple has assumed wider significance and has become a national issue for some time. There is a suit pending directly linked with the dispute in the Lucknow Bench of the Allahabad High Court and is being heard by a specially constituted three

Judge bench. As it is, there are two sets of proceedings before the High Court - one relating to the temple-cum-mosque and the other relating to acquisition.

5. Mr Garg appearing in support of the petitions has attempted to persuade us that the matter relating to acquisition should be transferred to this Court and dealt with. We are of the view that when the High Court has already entertained the matter, made an interim order and as stated at the Bar is taking the case for final disposal some time in December of this year, it may not be necessary and justifiable to transfer the writ petition pending before the High Court to this Court. On the other hand, appropriate directions regarding interim arrangement may be made and three petitions transferred to the High Court for analogous disposal.

6. We have heard Mr Jaitley, learned counsel for the respondent State. On instructions from an officer present in Court, it has been gathered and told to us that the wall which was interfered with on October 31 is at a distance of 25 to 30 mtrs. from the disputed construction. It is not denied that there are some old constructions in between the main construction and the outer wall referred to above. We are of the view that even if these constructions may be a part of the acquired land under the disputed acquisitions, nothing should be done to interfere with such constructions which are standing. Parikrama facilities to be provided to pilgrims can certainly be done as permitted by the High Court but full care and attention should be devoted to ensure that the standing constructions including the outer wall which are old in character and are claimed to be a part of the disputed construction may not be interfered with in any manner. This must be the total responsibility of the State of Uttar Pradesh to ensure compliance.

7. In the meantime, as we have been told at the Bar, there was a meeting at the national level of the Integration Council and the Chief Minister of the State as it appears from the affidavit of the Home Secretary of the respondent-State dated November 13, 1991 made certain statements to the Council. These have been extracted in paragraph 3 of the affidavit and read thus :

"The Chief Minister has made several statements at the National Integration Council meeting on November 2, 1991. On the basis of the statements, the resolution of National Integration Council was passed on November 2, 1991. The Resolution itself states :

'The Council noted the following assurances given by the Chief Minister of Uttar Pradesh :

- (i) All efforts will be made to find an amicable resolution of the issue;
- (ii) Pending a final solution, the government of Uttar Pradesh will hold itself fully responsible for the protection of the Ram Janmabhumi-Babri Masjid structures;
- (iii) Orders of the court in regard to the land acquisition proceedings will be fully implemented; and
- (iv) Judgment of the Allahabad High Court in the cases pending before it will not be violated'."

8. We shall take it, and Mr Jaitley has no objection to our doing so, that the State of Uttar Pradesh remains bound by what has been stated in this paragraph and this shall be the obligation of the State of Uttar Pradesh to stand by our order of today which is made after taking into account the stand of

the State of Uttar Pradesh as disclosed by the Chief Minister and reiterated in the affidavit of the Home Secretary. It shall, therefore, be taken as a representation to the Court on which we have made this order.

9. Since the matter is before the Court and is being looked into, we hope and trust that the people of India - to whichever community they belong - need not feel agitated and invite occasions of confrontation leading to an unwarranted commotion. We expect the nation to exhibit due understanding and solidarity on national issues and sincere attempt for resolution of disputes should be undertaken. We are aware of the sensitive character of the matter and, therefore, have not said anything more than necessary. We are sure every like-minded citizen of this country would understand the gravity and conduct himself accordingly for maintaining peace and amity. This order shall remain valid until the writ petitions pending before the Allahabad High Court dealing with the land acquisition dispute are decided.

10. These writ petitions shall stand transferred to the Lucknow Bench of the Allahabad High Court to be taken with the connected proceedings but our order shall remain binding as we have indicated, till the disposal of the writ petitions.

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