

Achhan Rizvi (II)

Vs

State of U. P. and Others

I.A. No. 3 In Contempt Petition No. 102 of 1992 In Writ Petition (Civil) No. 1000 of 1991 with Contempt Petition No. 97 of 1992 In W.P.(C) Nos. 977 and 972 of 1991 and 264 of 1992

(M.N. Venkatachaliah, G.N. Ray JJ)

25.11.1992

ORDER

1. The matter has come up for orders on IA No. 5 on what has been described as an "explosive situation" in Ayodhya as a result of declarations by certain religious groups that beginning 6-12-1992 there will be a resumption of 'Kar Seva' on the acquired site of 2.77 acres in avowed violation of the orders of the High Court where petitions challenging the constitutionality of the acquisition are pending. There are also certain order of this Court which, incorporating the orders of the High Court in this behalf, also have the effect of interdicting any constructional activity on the acquired land pending disposal of the proceedings.
2. What is poignant is that the arguments in the writ petitions before the High Court are concluded and the learned Judges have reserved their judgment. At this juncture some of the religious groups have threatened to take law into their own hands.
3. Mr. O. P. Sharma, in support of IA No. 5, submitted that having regard to the fact that the situation has reached - in the words of the learned Attorney General - a boiling point and with the known sympathy of the Governmental machinery in the State for the aspirations of the said religious groups, any inaction on the part of the Court would result in the Court being presented with a fait accompli rendering all pending judicial proceedings worthless and infructuous. The petitioner in IA No. 5 therefore, seeks directions to the Union Government to step in to prevent a violation of the orders of the Court and also place property in custodia legis by the appointment of a Receiver who will act under the control and directions of the Union Government. It is suggested that the Receiver, while permitting all legitimate, customary religious activities, if any, on the property, should, however, ensure against the threatened disobedience of the Court's orders. This arrangement, it is submitted, is the only possible assurance to prevent further breaches of the orders of the Court and to preserve the property in status quo pending adjudication of the dispute.
4. We have learned Attorney General for the Union Government who appeared upon notice from the Court. Shri R. K. Garg, Shir Gobinda Mukhoty and Shir O. P. Sharma, learned senior counsel, made their submissions in support of IA No. 5. Shri K. K. Venugopal and the learned Advocate General appeared for the State of U.P. and the Chief Minister of the State.
5. On the previous occasion, at the request of Shri K. K. Venugopal, we granted time till today for the State to spell out what convincing assurance it could hold out to prevent the threatened violation. We indicated to Shri Venugopal that the matter is indeed sensitive and it is not merely the question of some construction on some land, but symbolises, conceptually and in the ultimate analysis,

weakening of constitutional institutions. It would be a pity if the State is unable, for whatever reasons, to uphold and enforce the orders of the highest Court in the land.

6. In response, Shri Venugopal has filed an affidavit by the Special Secretary to the Home Department of the Uttar Pradesh Government, in which, inter alia, it is stated :

"The State Government has been giving grave and anxious consideration to the situation arising from the call given for resumption of Kar Seva on the acquired land. The State Government agrees, that the duty of preventing the violation of order of the Court lies on it and is its responsibility."

Then advertng to certain delicate and sensitive issues, as the State perceives them, involved in the handling of the situation and to the possibility of any decision to exert force, might result in a very grave situation and the braving of disastrous consequences, which might become irreversible, the affidavit proceeds to say :

"The State of U.P. would therefore be seeking direct negotiation with the leaders of VHP and the leaders of the Dharam Sansad for the purpose. So that the solution for achieving the religious aspirations should be achieved without violating the orders of the Court. If this were to be done, the State Government will need at least a week to report to the Court the outcome of its negotiations with the leaders mentioned earlier."

7. It appears to us that if no assurance of an effective implementation of the Court's orders is forthcoming from the State Government, it will be our constitutional duty not merely to expect but to exact obedience in an appropriate manner. This step, we believe, would become necessary to preserve the meaning and integrity of the constitutional institutions and their interrelationships, essential to the preservation of the chosen way of life of the Indian people under the Constitution.

8. Shri Venugopal shared our concern and expressed the hope - he was not in a position to hold out any more than that at this stage - that given a week's time, the Government would negotiate with the religious groups to avoid a collision course and persuade them to take a rational view of the situation.

9. Learned Attorney General who was present at our request, and the learned counsel appearing for the petitioners in the contempt petitions, say that the situation is already almost out of control and that any further delay might make the situation irreversible in practical terms from the point of view of management of the situation.

10. The Central Government is, of course, at liberty to make its own assessment of the matter and take such action on its own as may appear to it proper and permissible.

11. Shri Venugopal aired a strong grievance that the issue is equally sensitive the other way as well, in that the religious aspirations and hopes of a large section of the populace in the country for the construction of a Temple there, seemed entrapped in frustrating legal manoeuvres and that the present impasse is the manifestation of the exasperation resulting from such legal experience. He submitted that the State Government should be trusted to explore the possibility of defusing the situation in its own way.

12. We do notice from the submissions of Shri Venugopal that the situation is not without its

emotive surcharges; but it is at these trying times the capacity for statesmanship of those who bear the burden of Government - of good government - is put to test. They should display statesmanship and deal with matters in such a way that would not result in the destruction of constitutional institutions and in the upsetting of social equilibrium. However, we make it clear to Shri Venugopal that if the State Government is not in a position to come forward with a convincing stand that will reassure the Court that no violation of its Orders will be permitted, we might have to consider the prayers in IA No. 5 for the appointment of a Receiver or directions to the Central Government to ensure obedience to the Court orders. We do hope that the State of Uttar Pradesh will not compel the Court to take that course leaving it no other option.

13. In view of the serious situation pointed out by the learned Attorney General, it may not be proper to adjourn the matter for seven days as sought by the State of Uttar Pradesh. We, however, think it reasonable to adjourn the matter till Friday 2.00 p.m. on the assurance of Shri Venugopal that the honesty of purpose on the part of the State Government to pursue the negotiations with the religious groups carries with it an implicit assurance that in the meanwhile, the ground realities would not be altered to the detriment of the Court order. Shri Venugopal said the State Government would seek to persuade the religious groups to defer 'Kar Seva' till after the pronouncement of the High Court or at least for a reasonable time in future. If any constructive response is forthcoming from the State Government, we might, in order to strengthen the hands of the State Government in its handling of the religious groups, consider making appropriate request to the High Court in the matter of a need for most expeditious decision of the matter.

14. Call this on 27-11-1992 at 2.00 p.m.

Court Masters

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