

Achhan Rizvi (III)

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 and 97 of 1992 in W.P. (C) Nos. 977 and 972 of 1991 and 264 of 1992

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

28.11.1992

ORDER

1. We have heard all the learned counsel at quite some length on the question whether the prayer in IA No. 5 for the appointment of a 'Receiver' requires to be granted or not.

2. On 25-11-1992, we had occasion to say in the course of the order :

"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 the life of the Indian people under the Constitution.

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."

3. Today, the Special Secretary to the Government of Uttar Pradesh, Home Department, in the context of what Shri Venugopal calls a major, markedly reassuring and eminently appropriate progress in the mood of the situation, has filed an affidavit on behalf of the State Government which, referring to the efforts made by the State Government in regard to the negotiations and discussions with the religious groups which have called for a Kar Seva from 6-12-1992, states :

"2. The State Government would like to place on record the further progress the negotiations have taken. The ongoing process of discussions and negotiations with the religious leaders and the leaders of the VHP have been fruitful as a result of which Smt. Rajmata Scindia, Senior leader and trustee of the VHP has sent a letter to the Chief Minister of U.P. which is self-explanatory. The letter is annexed herewith and marked as Annexure I.

3. As already stated, the State Government is now confident that as long as the writ petitions regarding acquisitions are pending and the interim orders of the High Court are in force no construction, permanent or temporary, will take place though to satisfy the religious aspirations of the Ram Bhaktas Kar Seva other than by way of construction as stated may take place.

4. The State Government is confident that there will be no movement of construction machinery or construction materials in to the acquired land of 2.77 acres and, therefore, the question of machinery or building material being moved from the site of the Lakshman Temple or Seshavatar Temple (which is adjacent to the acquired land) into the acquired 2.77 acres does not arise."

Annexure I referred to by the Special Secretary in the affidavit states :

"In response to the discussion with the Government of Uttar Pradesh, I concur with the statement of Swami Chinmayanandji dated 27-11-1992, that Kar Seva would be performed on 6-12-1992, without violating the Court order."

4. The State Government has also filed an undertaking before us to this effect :

"State Government assures the Court that it will ensure that no construction machinery or construction material will move into the acquired land and no construction activity will take place or carried out as long as the High Curt interim orders are in force in the writ petition pending before it relating to the land acquisition."

5. Shri Venugopal submits this, indeed, is an achievement of the State Government having regard to the very sensitive nature of the subject and the highly excited mood of the religious groups over this emotive issue.

6. The State Government, during the course of submissions on it behalf expressed its readiness and willingness to ensure that, apart from what the obligations emanating from and implicit in the undertaking, no constructional machinery or equipment now located in the area of and used for Sri Lakshman Temple, adjacent to the acquired land, will be shifted from their present location, and that in the name of 'Kar Seva' no constructional activity, either temporary or permanent, would take place or allowed to take place on the acquired land. In this context, the State Government explains that 'Kar Seva' would be a symbolic occasion for carrying on certain religious activities to assuage the feelings of the devotees and will not be allowed to be exploited for any constructional activities, symbolic or otherwise. The Uttar Pradesh Government also agrees to ensure that character of the acquired land will not be allowed to be altered. Shri Venugopal submitted that the whole complexion of the problem has vastly changed as a result of these strenuous and sincere endeavours of the State Government to persuade the religious groups and their leaders. He submitted that it is only appropriate that the Court should take into account and appreciate these positive and constructive developments that have since occurred in the larger interests of the country at the instance of the State Government and should record that the need to make any orders on IA No. 5 does not exist at all. Shri Venugopal stated that such expansive demands as are made through IA No. 5 would only serve to aggravate a situation which, otherwise, is wholly under control and within the framework of law.

7. Shri O. P. Sharma, learned senior counsel appearing in support of IA No. 5, however, cautioned us that any undue reliance on the evanescent assurance of the State Government might lead to serious situation developing on the spot as indeed, according to him, the track record of the Government in the schism between its assurances and performances would not justify such total and implicit trust. In view of its past record on this issue the State Government has disintitiled itself to the credibility of its intentions and assurances. Shri Sharma said that once large mass of humanity is allowed to congregate on the spot, the State Government on its own self-confessed inability or

disinclination to use force against the devotes would achieve indirectly what it is forbidden to do directly. Shri Sharma asserts that the previous experience of what happened between 6-7-1992 and 26-7-1992, should put the Court on guard and examine very closely whether the State Government is adopting a stratagem to enable collection of large mass of people who ultimately will be allowed to and formally blamed for taking (sic law) into its won hands and pleading its own helplessness.

8. On an anxious consideration of the matter, we think that while the submissions of Shri Sharma cannot altogether be brushed aside, the positive side of the developments that have occurred at the instance and initiative of the State Government should not be belittled but recognised. The State Government has come forward with an emphatic assurance and undertaking that the orders of the High Court will be obeyed and implemented and that no constitutional activity will be carried on or permitted to be carried on by whatsoever agency on the acquired land. It will, therefore, be the total responsibility of the State Government to ensure that the orders of the High Court or of this Court are implemented. We think, in view of these developments we should abstain from granting the prayer in IA No. 5 at this stage. If, however, the complexion of the problem changes which might justify a further consideration of IA No. 5 the matter could be examined at the appropriate occasion and for that purpose IA No. 5 will remain pending.

9. At the same time, we think, we should appoint a Judicial Officer as an Observer of the situation. We request the Chief Justice of the Allahabad High Court to spare the services of any District Judge in the State Judicial Service for a period of 2 weeks in the first instance to observe and monitor the situation and submit a report to this Court whenever, in his opinion, developments tending to be detrimental to the effectuation of this order take place. This request may be communicated by Registrar General of this Court to the Registrar of the Allahabad High Court to be placed before the Hon'ble Chief Justice of the High Court.

10. We thought that the decision of the State Government to prevent any construction activity on the acquired land should receive adequate publicity so that Kar Sevaks who, having regard to the usual connotations of that expression, might not be misled as to the purpose of their presence. Shri Venugopal submits that the course of events in the immediately following days would indicate that the stand of the Government and the orders of this Court have received due and adequate publicity and that the need for any special procedure for publicity be considered thereafter. We agree.

11. Shri Venugopal also recalled to us that the terms of the last paragraph of the order made on 25-11-1992 to the effect that if any constructive response was forthcoming from the State Government we might consider requesting the High Court for an expeditious decision of the matter. Shri Venugopal says that the State Government by its performance is now entitled to seek Court's consideration of this prayer.

12. Indeed, in a matter of this nature, it is neither advisable nor practicable to tell the High Court within what timeframe it should render a judgment; but having regard to what we said on the previous occasion, we request the High Court to consider the expectations of the parties and the requirements of justice and bestow on it such thought as it might consider proper.

13. We direct this matter be listed on Monday 30-11-1992, at 2.00 p.m.

14. A copy of this order will go to the Registrar of the Allahabad High Court, Lucknow Bench.

Court Masters

Note : Copies of this order be issued on 29-11-1992.

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