

Supreme Court of India

Special Reference No.1 of 1993

Ram Janma Bhumi-Babri Masjid matter

27.01.1993

(M.N. Venkatachaliah CJI, A.M. Ahmadi, J.S. Verma, G.N. Ray, S.P. Bharucha)

ORDER

1. On January 7, 1993, the President of India, in exercise of powers conferred on him under Article 143(1) of the Constitution of India, referred the following question to this Court for its consideration and opinion, viz.:

"Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

2. Upon receipt of the said reference, the Registry of this Court gave notice to the learned Attorney General of India as required by Rule 1 of Order XXXVII of the Supreme Court Rules, 1966, to appear before the Court on January 12, 1993, to take directions from the Court under Rules 1 and 2 of Order XXXVII of the said rules. Directions of the Court were sought on the following points:
 - a. "The parties who shall be served with the notice of reference and the mode of service.
 - b. The date of entering appearance by the parties and filing of statement of facts and arguments on their behalf.
 - c. The date of hearing of the reference."

3. Directions were also sought as to whether notices may be issued to the Advocates-General of all States.
4. The reference came up for directions before a Bench comprising two of us (Venkatachaliah and Ray, JJ.) on January 12, 1993 when after hearing the learned Attorney General, Mr Milon Banerjee, Mr R.K. Garg, Senior Counsel who sought leave of the Court to raise a preliminary objection to the reference on behalf of the U.P. Sunni Wakf Board, plaintiffs in Transferred Suit No. OS 4/89 of the High Court of Allahabad, Lucknow Bench and Mr O.P. Sharma, Senior Counsel for one Mohd. Aslam at Bhure, original petitioner in Writ Petition Nos. 972 and 977 of 1991 in the High Court, wherein, it was stated, questions related to the one under reference were raised. Mr Garg's preliminary objection was that the reference was invalid and could not at all be made under Article 143(1) of the Constitution. The Bench did not deem it proper at that stage to consider the preliminary objection but directed notices to issue to (1) the State of U.P. (ii) the Advocate- General of the State of U.P. and (iii) the Union of India. A direction was also given that the matter be placed before a Bench of five judges for consideration of the matter, including the preliminary objection raised by Mr Garg. Accordingly the matter was placed before this Bench on January 21, 1993.
5. When the reference was called on for hearing before this Bench it was noticed from the Registry's Office Report of the previous day i.e. January 20, 1993, that one Mr N. Safaya, a practising advocate of the Delhi High Court, had filed an intervention application through M/s Mitter & Mitter Co., advocates, raising an objection to the Court answering the reference for reasons set out in the application. We heard Senior Counsel Mr Duda in support of the intervention application. Mr R.K. Garg also stated that he too would like to make submissions on behalf of the Communist Party of India to point out that such a reference is not maintainable and propriety demands that this Court should refuse to answer it. Mr

O.P. Sharma desired that the parties to the original proceedings in the High Court which have abated by the thrust of Section 4(3) of the acquisition of certain area at Ayodhya Ordinance, 1993, should be served with notices.

6. The learned Attorney General invited our attention to the procedure which this Court had followed while dealing with the Presidential reference concerning the Special Courts Bill, 19782 and submitted that we follow the same procedure. In that case besides issuing notices to the Union of India, notices were issued to the Advocates-General of 22 States and public notices were issued in newspapers. He also said that there would be no objection to notices being issued to the parties in the proceedings which stood abated by virtue of Section 4(3) of the Ordinance. Mr Parasaran, the learned Senior Counsel for the State of U.P., while supporting the suggestions of the learned Attorney General, submitted that since this was the first reference on a question of fact, some departure from the procedure followed in the earlier reference may be necessary.

7. The questions which, therefore, arise for consideration at this stage include the maintainability and competence of the reference as also propriety or advisability of answering the same before we embark upon the larger question whether a Hindu temple or any Hindu religious structure existed prior to the construction of the disputed structure described as the Ram Janma Bhoomi-Babri Masjid in the area on which the demolished structure stood. It was submitted that since the preliminary objections go to the root and, if accepted, would not necessitate the factual enquiry, we should answer them first in point of time and if we decide to overrule the preliminary objections after hearing the concerned parties, we may go into the larger time-consuming question. On the other hand both the learned Attorney General and Mr. Parasaran submitted that such a procedure would cause avoidable delay which would not be in national interest having regard to the events that have occurred after December 6, 1992.

8. We have given our anxious consideration to the submissions made at the Bar and we are of opinion that while on the one hand it would be desirable to hear the preliminary objections at the threshold on the other hand we must also keep in view the urgency of the matter. We, therefore, consider it appropriate to issue a public notice in leading newspapers of the country, calling upon all interested parties (i) to submit, if they so desire, their response in respect of the preliminary objections on or before March 6, 1993, and (ii) on the merits of the reference on or before April 10, 1993. The response to the factual question referred for decision by the Court will be accompanied by an affidavit in Form No. 5 of Appendix 'C' to the Code of Civil Procedure, 1908, with the variation that for the word 'suit' the word 'reference' will be substituted. The concerned party will clearly set out in separate lists the documents referred to in his statement and the documents on which he proposes to rely and make a disclosure in regard to those documents in the affidavit to be sent along with his statements. Statements or responses received shall be liable to be rejected if not accompanied by such an affidavit.
9. Individual notices will be issued to (i) the Union of India (ii) the State of U.P. (iii) the Advocates-General of all the States and (iv) the parties to the proceedings which have abated by virtue of Section 4(3) of the Ordinance in the same manner. The learned Attorney General will supply the names of the parties to the abated proceedings within one week from today.
10. The Registry will prepare and place in tabular form the responses received on the preliminary objections before the Court takes up the matter on March 16, 1993, for further directions.
11. Needless to add that no party will have a right of audience unless the Court specifically allows the same.

12. The Registrar-General will ensure that the public notice is published in the newspapers latest by February 15, 1993.

Let the matter come up for directions on March 16, 1993.