

Court No. - 2

Case :- MISC. BENCH No. - 11879 of 2021

Petitioner :- U.P. Sunni Central Waqf Board Thru. Chairman

Respondent :- State of U.P. Thru Secy. Minority Welfare & Waqf, Lko & Ors.

Counsel for Petitioner :- Syed Aftab Ahmad, Farhan Habib

Counsel for Respondent :- C.S.C.

WITH

Case :- MISC. BENCH No. - 11922 of 2021

Petitioner :- Hasmat Ali & Ors.

Respondent :- Sub Divisional Magistrate, Ram Sanehighat, Barabanki & Ors.

Counsel for Petitioner :- Saud Rais

Counsel for Respondent :- C.S.C., Illegible

Hon'ble Rajan Roy,J.

Hon'ble Saurabh Lavania,J.

Heard Shri Jaideep Narayan Mathur, learned Senior Counsel appearing for the petitioners in Writ Petition no. 11879 (M/B) of 2021 assisted by Shri Syed Aftab Ahmad, Shri Yusuf Muchhala, learned Senior Counsel appearing for the petitioners in Writ Petition no. 11922 (M/B) of 2021 assisted by Shri Saud Rais, and Shri H.P. Srivastava, learned Additional C.S.C. for the State.

Shri H.P. Srivastava, learned Additional C.S.C. has raised an objection with regard to the locus of the petitioners.

Both these writ petitions have been filed challenging the orders passed by the Sub-Divisional Magistrate, Tehsil- Ram Sanehi Ghat, District- Barabanki and action taken in pursuance thereof in proceedings under Section 133 Cr.P.C by which, as alleged, a mosque which was existing on Plot no. 776, 777, 841 and 842 of Village- Banikodar, Tehsil- Ram Sanehi Ghat, District- Barabanki for the past 100 years and where people of the area professing and practicing Islam used to offer namaz has been demolished. It is said that in addition to the mosque there were certain other constructions, all of which have been demolished.

Restoration of the mosque and certain other reliefs has also been sought. According to learned Counsel for the petitioners the writ petitions raise various questions as to the scope and exercise of power under Section 133 Cr.P.C. including malafide exercise of power by the then Sub-Divisional Magistrate, Tehsil- Ram Sanehighat, District- Barabanki who has been arrayed by name and who used to reside just across the 'Masjid' and had certain grievances with regard to the 'azaan' being called from the loudspeaker and which in fact was redressed and the use of loudspeakers was discontinued but according to petitioners this did not satisfy the said officer who abused the power vested in him by passing arbitrary orders under Section 133 Cr.P.C. in exercise of the jurisdiction vested in him and he ensured demolition of mosque in gross abuse of law. Shri Mathur submitted that while doing so the officer concerned not only dwelt on the question of title of the land over which the Mosque existed but also on validity of the registration of the mosque etc. as Waqf under the relevant Waqf Act which in fact he did not have jurisdiction to do in proceedings under 133 Cr.P.C. He submitted that questions of title and possession cannot be decided in such proceedings under Section 133 Cr.P.C. The allegation is that the entire exercise of power was actuated by personal malice of the officer who had a personal axe to grind. It is said that the officer even went to the extent of changing the order initially passed by him on 03.04.2021, as, on a bare perusal of the contents thereof wherein there was a reference to the proceedings held on 09.04.2021, it was apparently ante-dated and realizing this error he made changes in the said order and passed another order on 12.04.2021 in an attempt to justify his action whereas in fact the said orders were passed without any opportunity of hearing to the concerned Committee of Management of the mosque. Not only this, the officer went to the extent of uploading the said order which in fact had been passed under the provisions of Cr.P.C. on the website of the Board of Revenue where only the orders passed by the Revenue Courts are uploaded. It is alleged that the senior authorities were mute spectators to the gross abuse of power and violation of rule of law by the said officer. The entire exercise according to the petitioners has hurt the sentiments of a large section of society including the petitioners and there is grave discontent at such abuse of power.

Shri Jaideep Narayan Mathur, learned Counsel has referred to Section 32 of the Waqf Act, 1995 to establish the locus of the petitioner U.P. Sunni Central Waqf Board to maintain its petition. He also contends that the Committee of Management of the concerned Waqf has been arrayed as opposite party no. 6 i.e. a proforma opposite party, as, its members are so petrified

by the display of power by the concerned authorities that they do not have the courage to approach the Court.

Shri Mathur has taken us through the contents of the petition filed by the Waqf Board as also the reliefs claimed herein. He has submitted that no doubt that against an order passed under Section 133 Cr.P.C. a revision lies under Cr.P.C. but considering the blatant misuse and abuse of power by the authority concerned that too for malafide reasons and the manner in which the constitutional scheme and rule of law has been violated it raises important questions touching upon the exercise of such power by State authorities violating valuable rights including constitutional rights of the citizens, therefore, this writ petition has been filed. The plea is that senior authorities have also turned a blind eye to the arbitrary actions impugned herein. He also says that not only the mosque etc. have been demolished but its bricks which were proof of the time when the mosque had been constructed had been thrown in the river on the directions of the aforesaid officer. Moreover the said plots of land have been declared as a park. He further contended that the impugned action was also in defiance of the order dated 24.04.2021 passed by a Division Bench of this Court in PIL no. 504 of 2020, in re: State of U.P.

Shri Yusuf Muchhala learned Senior Counsel appearing in the connected petition adding to the submissions already made by Shri Mathur asserted that the petitioner no. 1 and 2 of Writ Petition no. 11922 (M/B) of 2021 used to offer namaz at the mosque which has been demolished, therefore, they have locus to challenge the action impugned herein. He also asserted that petitioner no. 3 All India Muslim Personal Law Board, considering the object for which it has been established which is to protect the rights of Muslims also has locus standi in the matter. In this regard, he has relied upon paragraph 151 of the dictum of Hon'ble The Supreme Court in the case of S.R. Bommai Vs. Union of India. The impugned action has larger ramifications with regard to abuse of law and malafide exercise by State authorities in complete disregard of the constitutional spirit thereby violating valuable rights of the petitioners. He submitted that the matter was beyond the scope of exercise of power under Section 133 Cr.P.C., yet, the officer, only to satisfy his personal ego and out of malice, not only proceeded under the said provision unjustifiably and illegally but ensured that the mosque is demolished. There is no place for personal ego's, whims and fancies in a country governed by rule of law. Such actions by State authorities hurt sentiments of the citizens including the petitioners who are affected by it and lead to a feeling of helplessness and alienation.

We asked Shri Mathur as to what was the nature or category of land on which the Mosque, as alleged, existed; who was its owner? In this regard Shri Mathur invited our attention to certain consolidation records of 1960's wherein said land is mentioned as 'Abadi' though Masjid is also mentioned therein. On being further asked as to how the Mosque was constructed on Abadi land, Shri Mathur submitted that it had been constructed 100 years ago, however, he was unable, as of now, to show any documentary proof in this regard to justify the same, whether of the period prior to the date of vesting as per the UPZALR Act, 1950 such as Revenue Records of 1356 F or thereafter (Revenue Records of 1359 F, Basic year khatauni of Consolidation) or for that matter any other document.

On being pointed that if the relief for restoration of Mosque is to be considered in these proceedings, assuming that the occasion so arises, then, the fact that the mosque validly existed on the land in question would have to be established and that this issue may also fall for consideration in the context of other reliefs claimed, Shri Muchhala appearing in connected matter referred to concept of 'Waqf by user' but ultimately submitted that they would not enter into complicated questions of title and would not raise the same in these proceedings and would confine their grievance to the relief claimed against the arbitrary, illegal and blatant exercise of power under Section 133 and claim for compensation for the same. Shri Mathur however submitted that this question may be left open for consideration after exchange of affidavit.

Having heard learned Counsel for the parties who are represented today, we are of the opinion that these petitions prima facie raise important questions inter alia as to the existence of a Mosque on public utility land, if it is so, as also, with regard to exercise of power by State authorities under Section 133 Cr.P.C. and other related provisions, its scope, especially the allegations of malafide exercise of power and the manner in which it has been done, as alleged by the petitioners. Therefore, leaving all pleas open for consideration, we issue notice to the opposite parties no. 4 & 6 in Writ Petition no. 11879 (M/B) of 2021 and opposite party no. 5 in Writ Petition no. 11922 (M/B) of 2021. Opposite party no. 4 in Writ Petition no. 11879 (M/B) of 2021 and opposite party no. 5 in Writ Petition no. 11922 (M/B) of 2021, in addition to the normal mode of service, shall also be served through the Additional Chief Secretary/Principal Secretary Appointment, Government of U.P, as it is said that he has been transferred elsewhere after the incident.

The opposite party no. 4 in Writ Petition no. 11922 (M/B) of

2021 is the petitioner in the other writ petition, therefore, we do not issue notice to it instead the petitioner of the connected writ petition may appear and file its response in the said writ petition also. The other parties are official opposite parties who are already represented by the Additional C.S.C., who is present.

Let all the opposite parties file their counter affidavit in the matter positively within 3 weeks.

One week shall be available thereafter to the petitioners for filing rejoinder affidavit.

The matter shall come up **as fresh on 23.07.2021.**

(Saurabh Lavania, J.) (Rajan Roy, J.)

Order Date:- 22.06.2021

Lokesh Kumar