

Judgment reserved on 04.09.2023
Judgment delivered on 11.10.2023

Chief Justice's Court

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1751 of 2020

Petitioner :- Mehek Maheshwari

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- In Person

Counsel for Respondent :- A.S.G.I.

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Ashutosh Srivastava,J.

1. The instant writ (PIL) seeks to espouse the cause of denial of fundamental rights under Articles 25 and 26 of the Constitution of India by preventing the Hindus from worshipping actual place of Krishna Janmsthan at Mathura by construction of the Shashi Idgah Mosque after demolition of the temple as also the issue of imposing Sections 2, 3 & 4 of the Places of Worship Act, 1991, which are alleged to be unconstitutional.

2. In the writ (PIL), it has been averred that the petitioner is a devout Hindu and prays that his fundamental right to worship be facilitated and protected. The petitioner wants the actual place of Krishna Jahmabhoomi Janmasthan over which the Shahi Idgah Mosque exists be acquired by the State Government and be handed over to the Hindus for worshipping Lord Krishna Virajman in the Krishna Janmasthan. It has been averred in the petition that the maternal great grand-mother, who resided in Mathura, told the petitioner about the spiritual importance of Mathura and Braj Mandal 84 Kos. She also told the petitioner how the Shahi Idgah masjid came to be constructed after demolition of a lofty temple of Lord Shree Krishna at the birth place by Aurangzeb, the Mugal Emperor. It has also been averred that the right of worship of the Hindu Community has been substantially reduced from 13.37 Acres of land of Sri Krishna Janmasthan on account of encroachment of Trust Masjid Idgah, which manages the affairs of the Shahi Idgah. It has also been averred that the Committee of Management of Masjid Trust Idgah entered into an illegal compromise on 12.10.1968 with the Society Shree Krishna Janmasthan Sewa Sangh and both have played fraud upon the Court, the dieties and devotees with a view to grab the property. The petition also

attempts to demonstrate the demolition and encroachment over Shri Krishna Janmasthan by stating historical and archaeological facts. The petition also states that during the British Rule in 1815, the entire land of the Janmasthan admeasuring 13.37 Acres was put to auction and ultimately sold to Raja Patni Mal of Banaras who was the highest bidder. The name of the Raja was recorded over the 13.37 Acres of land as owner in possession. The challenge to the auction, sale, ownership and possession of Raja Patni Mal by Muslims failed. A Civil Suit, being Civil Suit No. 517 of 1928, was filed by one Rai Kishan Das heir of Raja Patni Mal in which also, the ownership and possession of the land in dispute was upheld upto this Hon'ble Court in Second Appeal No. 691 of 1932, decided on 02.12.1935. On 08.02.1944, Rai Kishan Das and Rai Anand Das, heirs of Raja Patni Mal executed a sale deed of the 13.37 Acres of land in favour of Mahamana Madan Mohan Malviya, Goswami Ganesh Dutt and Bhikhan Lallji Aattrey. Yet another Suit, being Suit No. 4 of 1946, was filed on behalf of Trust Masjid Idgah questioning the sale deed which was dismissed on the basis of compromise and it was agreed that the decision in Second Appeal No. 691 of 1932 would be binding on the parties. Thereafter, a Trust in the name and style of "Shri Krishna Janmbhoomi Trust" was created on 21.02.1951 and registered on 09.03.1951 under which, the entire land measuring 13.37 Acres was dedicated to the diety Lord Shree Krishna Virajman.

3. In the above backdrop, Sri Mahek Maheshwari, appearing pro-se, argues that Raja Patni Mal and his heirs initially and after them the Deity Lord Shree Krishn Virajman, is the exclusive owner and in possession of the entire 13.37 Acres of land and the Masjid Idgah or for that matter any Muslim does not have any right or title over the aforesaid land. The settlement between Shree Krishna Janmabhoomi Trust and Shahi Idgah Masjid whereunder approx 2 Acres of land has been given to Shahi Idgah Masjid is a fraud played upon the Court, the diety and the devotees.

4. Shri Maheshwari, petitioner in person, highlighting the basic difference between a Mosque and a Temple, has argued that the Krishna Janmabhoomi on Krishna Janmasthan would have an overriding claim over that of a Mosque. He has submitted on the strength of a Constitutional Bench decision of the Apex Court in the case of *Ismail Farooqui vs. Union of India reported in 1994 (6) SCC 376* that under Mohammedan Law applicable in India, the title to a Mosque can be lost by adverse possession and that a Mosque is not an

essential part of the practice of the religion of Islam and Namaz can be offered anywhere, even in the open. Therefore, its acquisition is not prohibited under the Constitution. In the case of a Temple, it is otherwise and even if a Temple is in ruins, it remains a temple and can be revived. If it is destroyed, a suit can be filed by or on behalf of the diety to recover possession. Apart from the above, it has been argued that the provisions of Sections 3, 4 and 5 of the Places of Worship (Special Provisions) Act, 1991 are violative of the provisions of Articles 14, 25, and 26 of the Constitution of India and are liable to be declared unconstitutional. It is, thus, submitted that the writ (PIL) is liable to be entertained and interim relief prayed for is liable to be granted.

5. Shri Kunal Ravi Singh, learned Chief Standing Counsel for the State of U.P. opposing the writ petition submits that though this petition has been described as a PIL, it is not in public interest rather, it espouses a personal cause in-as-much as the petitioner claims to be a devout Hindu and ardent devotee of Lord Shree Krishna. The PIL is based on the personal belief of the petitioner to worship on the spot where the Shahi Idgah Mosque is presently situated. There is no declaration as per Rule 3A of Rule 1 of Chapter XXII of the Allahabad High Court Rules, 1952 and in absence thereof, the writ (PIL) is liable to be dismissed in the light of the order passed in ***PIL NO. 31160 of 2021 (Syed Ahmad Faraz vs. U.P. Sunni Central Waqf Board and others)***. It is further submitted that under the order dated 26.05.2023 passed in Transfer Application (Civil) No. 88 of 2023 (Bahgwan Shri Krishna Virajman and 7 others vs. U.P. Sunni Central Waqf Board and 3 others) as many as 10 cases pending before the Civil Judge, Senior Division, Mathura have been transferred to this Court and are pending. The suits raise the same issues as have been raised in the instant writ (PIL). It is, thus, prayed that the writ (PIL) be dismissed at the threshold.

6. We have heard Shri Mahek Maheshwari in support of writ (PIL) pro-se as also Shri Kunal Ravi Singh, learned Chief Standing Counsel for the State of U.P. and have perused the records. We have also gone through the order dated 26.05.2023 passed in Transfer Application (Civil) No. 88 of 2023 which throws some light upon the nature of the Suits and the reliefs claimed therein which are pending consideration in the High Court. The Suits are for declaration, injunction and right to worship at the site of Shri Krishna Janmasthan and also for removal of the structure alleged to be the Shahi Idgah Mosque. The pending suits involve the issues relating to the interpretation of various facts of

statutes, constitutional law, personal law and common law.

7. Since the issues involved in the present writ (PIL) is already engaging attention of the Court in appropriate proceedings (i.e. the pending suits), we are not inclined to entertain the instant writ (PIL) and the same is accordingly *dismissed*.

Order Date :- 11.10.2023

Deepak/

(Ashutosh Srivastava, J.) (Pritinker Diwaker, CJ.)