

ITEM NO.10

COURT NO.1

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) Nos.7094-7095/2024

(Arising out of impugned final judgment and order dated 26-02-2024 in FAFO No.226/2024 26-02-2024 in FAFO No.227/2024 passed by the High Court of Judicature at Allahabad)

COMMITTEE OF MANAGEMENT ANJUMAN INTEZAMIA
MASAJID VARANASI

Petitioner(s)

VERSUS

SHAILENDRA KUMAR PATHAK VYAS & ANR.

Respondent(s)

(With I.R. and IA No.70965/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.70977/2024-EXEMPTION FROM FILING O.T. and IA No.70967/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 01-04-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Huzefa A Ahmadi, Sr. Adv.
Mr. Fuzail Ahmad Ayyubi, AOR
Mr. Nizamuddin Pasha, Adv.
Mr. Ibad Mushtaq, Adv.
Ms. Akanksha Rai, Adv.
Ms. Gurneet Kaur, Adv.

For Respondent(s) Mr. Shyam Divan, Sr. Adv.
Mr. Hari Shankar Jain, Adv.

Mr. Vishnu Shankar Jain, AOR
Ms. Marbiang Khongwir, Adv.
Ms. Muni Munjal, Adv.
Mr. Parth Yadav, Adv.

**UPON perusing papers the Court made the following
O R D E R**

- 1 An order of the learned Single Judge of the High Court of Judicature at Allahabad dated 26 February 2024 in proceedings arising out of two appeals¹ under Order XLIII Rule 1(s) of the Code of Civil Procedure 1908² forms the subject matter of the challenge. The proceedings before the High Court arose from orders dated 17 January 2024 and 31 January 2024 of the District Judge, Varanasi on application 9-C instituted in Original Suit No 34 of 2023. The suit in which the interim orders were passed is pending trial.
- 2 The reliefs which were sought in the application before the trial Judge were in the following terms:

“(A) Appoint District Magistrate Varanasi or any other suitable person as maybe deem fit and proper as receiver of the cellar (Tehkhana) in the Southern side of the building situated at Settlement Plot No. 9130 P.S. Chowk, District Varanasi;

(B) Direct the Receiver to allow the Plaintiff, co-Pujaris, the nominees of Shri Kashi Vishwanath Trust Board and the devotees to perform Pooja and rituals within the cellar (Tehkhana) existing within old temple of Lord Adi Visheshwar (alleged Gyanvapi Mosque) existing at Settlement Plot No. 9130 within the area of Ward and P.S. Chowk, Varanasi after making suitable provisions by making appropriate changes in the iron fencing for the said purpose within the time provided by the Hon'ble Court.”

1 First Appeal from Order No.226/2024 & First Appeal from Order No.227/2024

2 “CPC”

- 3 By an order dated 17 January 2024, the District Judge, Varanasi disposed of the application for interlocutory relief in terms of the following order:

“Application 9C is allowed. District Magistrate Varanasi is appointed the receiver of the basement (disputed property) situated on the south side of the building situated in Settlement Plot No.9130, Police Station Chowk, District Varanasi. The Receiver District Magistrate is directed to keep the property in dispute under his custody and control and keep it safe during the litigation and not to allow any change in its condition during the litigation.

The file should be presented on 25-01-2024 for disposal of application 6C.”

- 4 By a subsequent order dated 31 January 2024, the District Judge issued the following directions:

“The District magistrate Varanansi is directed to arrange for pooja, Raag-Bhog, through a Pujari named by the plaintiff and Kashi Vishwanath Trust Board, of the idols situated in the cellar located to the south of the structure standing at settlement plot no 9130 P.S. Chowk, District Varanasi, the disputed property, and for this purpose to make appropriate arrangements in the iron barricading within 7 days.”

- 5 Mr Huzefa Ahmadi, senior counsel appearing on behalf of the petitioners submitted that:

- (i) The directions which have been issued by the District Judge, Varanasi on 31 January 2024 are in the form of a mandatory injunction would virtually amount to a grant of final relief at the interlocutory stage;
- (ii) The admitted position from paragraph 1 of the plaint before the trial court is that from 1993 until 2023, the premises of the *tekhana* or cellar (in which worship by a Hindu priest has been allowed) were locked;

- (iii) Since the premises of the *tekhana* were locked for thirty years, there was no urgency to grant a mandatory injunction permitting religious ceremonies (through a priest to be named by the original plaintiff and the Kashi Vishwanath Trust Board) of the idols, if any, located in the cellar;
- (iv) The earlier order of the trial Judge dated 17 January 2024 was passed on an application for the appointment of a Receiver in terms of Order XL Rule 1 of the CPC and the order of the trial Judge appointing the District Magistrate as Receiver was subject to the condition that the property would be kept under custody and control during the litigation without any change in its condition;
- (v) In view of the first order which was passed by the trial Judge on 17 January 2024, the subsequent order dated 31 January 2024 cannot be regarded as consequential to the first order or as correcting an accidental omission in the earlier order since it is evident that the earlier order did not contemplate the performance of religious ceremonies or worship within the cellar;
- (vi) As a matter of fact, the conditions precedent for the appointment of a Receiver under Order XL Rule I of the CPC were also not fulfilled since apart from a bald averment, there is no likelihood of any damage, destruction or waste of the property;
- (vii) There was no evidence of any worship being offered by the Hindus in the cellar; and
- (viii) The entirety of the property surrounding the structure of the mosque constitutes *wakf* property and, hence as a consequence of the earlier sealing of the *wazukhana* which is followed by the impugned orders of the trial Judge and the High Court, a gradual attempt is being made to chip away at the mosque complex.

- 6 On the above grounds, it was urged that the order of the High Court affirming the orders of the trial court would warrant interference under Article 136 of the Constitution.
- 7 On the other hand, Mr Shyam Divan, senior counsel appearing on behalf of the first respondent-plaintiff submitted that:
 - (i) The points of access to the *tekhana* or cellar where religious observances have been permitted by the order of the trial Judge dated 31 January 2024 is distinct from the access to the mosque. While the access to the *tekhana* is from the southern side of the property, access to the mosque for the purposes of offering *namaz* is from the stairs on the northern side;
 - (ii) The orders of the trial Judge appointing a Receiver and allowing a priest nominated by the Kashi Vishwanath Trust Board and the plaintiff to perform religious observances are well reasoned and should not warrant interference at the interlocutory stage under Article 136 of the Constitution;
 - (iii) It would be incorrect to postulate that final relief has been granted in the form of a mandatory injunction by the trial Judge. The final declaratory relief which is sought in the suit pertains to the claim of the Vyas family to perform religious worship, whereas by the interim working arrangement, the temple trust has been permitted to nominate a priest to carry out religious observances in the cellar;
 - (iv) In the course of an earlier civil proceeding which culminated in a decree of 1937, there was a judicial recognition of a map which indicated the existence of *tekhana*. The judgment of the trial Judge in the present case noticed that the *tekhana* was in the possession of the Hindus right until 1993, when locks were placed both by the State

administration and by the Vyas family; and

- (v) In pursuance of the order of the trial Judge, *pooja* of the idols has commenced since 31 January 2024 and this arrangement ought not to be disturbed.
- 8 Responding to the above submissions, Mr Huzefa Ahmadi, senior counsel has submitted that the State administration acted with alacrity in implementing the order of the trial Court dated 31 January 2024 in the night barely within four hours, leaving the petitioners with no recourse to seek their remedies before the High Court under Order XLIII Rule 1 of the CPC.
- 9 We are of the considered view that it would be appropriate to issue notice in the Special Leave Petitions. We accordingly do so. Notice shall accordingly issue.
- 10 Mr Vishnu Shankar Jain, counsel appearing on behalf of the first respondent accepts notice and waives service.
- 11 During the course of the hearing, Mr Huzefa Ahmadi, senior counsel has placed on the record a Google earth image of the structure of the mosque including the area in dispute and some part of the surroundings. For the present purpose, the correctness of the image has not been disputed by the counsel appearing on behalf of the contesting parties, without prejudice to their rights and contentions in the suit and further proceedings. From the image which has been placed on the record, it has not been disputed by counsel that access to the *tehkhana* or cellar which forms the subject matter of the orders dated 17 January 2024 and 31 January 2024 is from the southern side. On the other hand, access to the mosque for the purpose of offering *namaz* is from the northern side.
- 12 The present position in pursuance of the orders dated 17 January and 31 January 2024 is that (i) as regards the area of the *tehkhana*, a priest

nominated by the Kashi Vishwanath Trust Board and the plaintiff has been permitted to offer *pooja* and other forms of worship; and (ii) *namaz* by the Muslims is continuing in the area of the mosque. It is the contention of Mr Huzefa Ahmadi, senior counsel that the courtyard surrounding the mosque is also a part of *wakf* property where *namaz* is being offered.

- 13 At this stage, bearing in mind the fact that *namaz* is being offered by the Muslim community unhindered even after the orders dated 17 January 2024 and 31 January 2024, and the offering of *pooja* and worship by a Hindu priest is in respect of the area of *tekhana*, it would be appropriate to allow the *status quo* as it obtains at present to continue so as to enable both the communities to offer religious worship. The religious observances by the Hindus shall be in terms of the directions contained in the order dated 31 January 2024 subject to the custody of the Receiver as specified in the earlier order dated 17 January 2024.
- 14 The *status quo*, as it obtains in the above terms, shall not be disturbed by either of the parties without obtaining the previous sanction and leave of this Court.
- 15 The counter affidavit shall be filed on or before 30 April 2024.
- 16 List the Special Leave Petitions for final disposal on a non-miscellaneous day on 23 July 2024.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar