

ITEM NO.40

COURT NO.4

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).9388/2022

(Arising out of impugned final judgment and order dated 21-04-2022 in MUA227 No. 2946/2022 passed by the High Court of Judicature at Allahabad)

COMMITTEE OF MANAGEMENT ANJUMAN
INTEZAMIA MASAJID VARANASI

Petitioner(s)

VERSUS

RAKHI SINGH & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.75323/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.75326/2022-EXEMPTION FROM FILING O.T.)

Date : 17-05-2022 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Petitioner(s) Mr. Huzefa A. Ahmadi, Sr. Adv.
Mr. Fuzail Ahmad Ayyubi, AOR
Mr. Nizamuddin Pasha, Adv.
Mr. Ibad Mushtaq, Adv.
Ms. Kanishka Prasad, Adv.

For Respondent(s) Mr. Tushar Mehta, SG
Mr. Ajay Mishra, Adv. Gen.
Mr. Ardhendumauli Kumar Prasad, AAG
Ms. Garima Prashad, Sr. Adv.
Mr. Sharan Dev Singh Thakur, AAG
Ms. Ruchira Goel, AOR

Mr. Barun Kumar Shinha, Adv.
Ms. Pratibha Shihha, Adv.
Ms. Baby Devi Bonia, Adv.
Mr. Abhishek, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The orders of the Civil Judge, Senior Division, Varanasi dated 18 August 2021, 5 April 2022 and 8 April 2022 were questioned before the Single Judge of the High Court of Judicature at Allahabad in a petition under Article 227 of the Constitution¹. The Single Judge by an order dated 21 April 2022 rejected the petition.
- 2 In pursuance of the order of the Trial Judge, the Commissioner commenced executing the work of the Commission on 14 and 15 May 2022.
- 3 During the course of the execution of the work of the Commission, an application was moved before the Trial Judge on 16 May 2022 by counsel for the plaintiffs stating as follows :

“Sir

Today on 16.05.2022, a Shivalinga is found in Masjid Complex at the place where Waju Khana is there..

This is a very important piece of evidence.

Kindly make the following directions -

1. Direct the C.R.P.F. Commandant to seal the Waju Khana with proper force.
2. Kindly direct the District Magistrate to restrict entire of Muslims for offering Namaz.

Not more than 20 Muslims be allowed to offer Namaz.

3. Kindly stop the usage of Weju Khana with immediate effect.”

4. On the above application, the following order has been passed *ex-parte* :

“Application 78Ga is allowed. The DM, Varanasi is directed that the place where Shivalinga has been found should be sealed with immediate effect and entry of any person should be prohibited in the sealed area. The DM, Varanasi, Police Commissioner, Police Commissionerate, Varanasi and the C.R.P.F. Commandant, Varanasi, are directed that the individual responsibility for the protection and preservation of the place which is being sealed shall be individually upon the aforesaid officers. With regards to the place being sealed the responsibility of supervision of what is being done by the administration shall be upon the Director General of Police, Police Headquarters, Uttar Pradesh, Lucknow and Principal Secretary, U.P. Government, Lucknow.”

5. Issue notice returnable on 19 May 2022. Dasti permitted in addition.
6. Mr Huzefa A Ahmadi, learned senior counsel appearing on behalf of the petitioner, submits that since the Trial Judge has allowed application No 78Ga, the order is susceptible of the interpretation that the entirety of the reliefs which were sought has been allowed. Learned senior counsel urged that the above order has been passed *ex-parte* when the work of the Commission was in progress and that the petitioners question the order to carry out a survey on the ground of jurisdiction.
7. Mr Tushar Mehta, learned Solicitor General, appears for the State of Uttar Pradesh.
8. In order to obviate any dispute on the meaning and content of the order of the Trial Judge, the operation and ambit of the order dated 16 May 2022 shall stand restricted to the extent that the District Magistrate, Varanasi shall ensure that the area where the Shivalinga is stated to have been found, as indicated in the order, shall be duly protected.

- 9 The above direction shall not in any manner restrain or impede the access of Muslims to the mosque or the use of the Mosque for the purpose of performing *Namaz* and religious observances.

(SANJAY KUMAR-I)
AR-CUM-PS

(MALEKAR NAGARAJ)
COURT MASTER