

ITEM NO.802

COURT NO.1

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.14853/2023

(Arising out of impugned final judgment and order dated 31-05-2023 in CR No.101/2022 passed by the High Court of Judicature at Allahabad)

**COMMITTEE OF MANAGEMENT ANJUMAN INTEZAMIA
MASAJID VARANASI**

Petitioner(s)

VERSUS

RAKHI SINGH & ORS.

Respondent(s)

(With IA No.131818/2023-EXEMPTION FROM FILING O.T.)

Date : 24-07-2023 This petition was 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. Mohd. Nizam Pasha, Adv.
Mr. Ibad Mushtaq, Adv.
Ms. Rashmi Singh, Adv.
Ms. Akanksha Rai, Adv.
Mr. Asshar, Adv.

For Respondent(s) Mr. Tushar Mehta, SG
Mr. Sharan Dev Singh Thakur, AAG
Ms. Ruchira Goel, AOR

**Mr. Shyam Divan, Sr. Adv.
Mr. Hari Shankar Jain, Adv.
Mr. Vishnu Shankar Jain, AOR**

**UPON being mentioned the Court made the following
O R D E R**

- 1 On mentioning, the matter is taken on Board.
- 2 Mr Huzefa Ahmadi, senior counsel appearing on behalf of the petitioners submitted that on Friday 21 July 2023, the District Court passed an order at 4.30 pm permitting a survey/excavation of the site. Senior counsel submits that this has left the petitioners with no time to pursue remedies before the High Court since in the meantime, it is apprehended that a survey and possible excavation may be carried out. It has been submitted that a survey team has reached the site this morning.
- 3 The petition was mentioned for urgent orders, in the presence of Mr Shyam Divan, senior counsel appearing on behalf of the original plaintiffs i.e. the second to fifth respondents. This Court requested the learned Solicitor General, Tushar Mehta to take notice so that some clarity is afforded to the Court in regard to the situation at site.
- 4 On contacting the Archaeological Survey of India (ASI), Mr Tushar Mehta, Solicitor General informed the Court that the apprehensions of the petitioners may be allayed at this stage since at least for a period of a week, there would be no effort to carry out any excavation at site. Moreover, it has been submitted that only measurements, photography and radar imaging would be carried out at the site.
- 5 From the above statement which has been made by the Solicitor General, it appears that the ASI is not contemplating any excavation in pursuance of the impugned order of the District Court though it was specifically permitted by

the District Court to do so.

- 6 In this view of the matter, we record the statement which has been made on behalf of the ASI specifically to the effect that no excavation at the site is contemplated at this stage until 31 July 2023.
- 7 The petitioners are at liberty to move the High Court in the exercise of its jurisdiction under Article 227 of the Constitution and/or Section 115 of the Code of Civil Procedure 1908 to challenge the order of the District Judge, Varanasi. Having regard to the fact that the order of the District Court was pronounced at 4.30 pm on 21 July 2023 and the survey is in the process of being carried out today, we are of the view that some 'breathing time' must be granted to the petitioners to move the High Court for pursuing their remedies. We direct that the impugned order of the District Court shall not be enforced until 5 pm on 26 July 2023. This shall not be construed as the expression of opinion on the merits.
- 8 In the meantime, should the petitioners move the High Court with a petition/application under Article 227 of the Constitution or appropriate proceedings as are maintainable under Section 115 of the Code of Civil Procedure, the Registrar (Judicial) of the High Court shall ensure that it is placed before the appropriate court according to the roster so that it can be heard before the order of *status quo*, which has been granted by this Court today, comes to an end.
- 9 Subject to the above, the Special Leave Petition is disposed of.
- 10 Pending applications, if any, stand disposed of.

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

(RENU BALA GAMBHIR)
COURT MASTER