

Court No. - 18

Case :- MATTERS UNDER ARTICLE 227 No. - 3341 of 2017

Petitioner :- Anjuman Intazamia Masazid Varanasi

Respondent :- Ist A.D.J. Varanasi And Others

Counsel for Petitioner :- A.P.Sahai,A.K. Rai,D.K.Singh,G.K.Singh,M.A. Qadeer,S.I.Siddiqui,Syed Ahmed Faizan,Tahira Kazmi,V.K. Singh,Vishnu Kumar Singh

Counsel for Respondent :- C.S.C.,A.P.Srivastava,Ajay Kumar Singh,Ashish Kr.Singh,Bakhteyar Yusuf,Prabhash Pandey,R.S.Maurya,Rakesh Kumar Singh,V.K.S.Chaudhary,Vineet Sankalp

Hon'ble Prakash Padia,J.

Heard Sri S.F.A. Naqvi, learned Senior Counsel assisted by Sri Syed Ahmad Faizan and Sri Punit Kumar Gupta, assisted by Devendra Kumar Mishra, learned counsel for petitioner and Sri Ajay Kumar Singh, Sri Vijay Shankar Rastogi, Sri Sunil Rastogi, Sri Tejas Singh, Sri Chandra Shekhar Seth and Sri Vineet Sankalp, learned counsel for contesting respondents, Sri Shashi Prakash Singh, Senior Counsel/Assistant Solicitor General of India assisted by Sri Manoj Kumar Singh learned counsel for respondent No.7 and Sri M.C. Chaturvedi, learned Additional Advocate General/Senior Advocate assisted by Vineet Pandey, learned Chief Standing Counsel, Vijay Sharnkar Prasad and Ved Mani Tiwari learned Standing Counsel for the respondent No.8.

Sri Vijay Shankar Rastogi argued that mere registration of the property in the Waqf Act does not affect the rights of a person who is not a Muslim. He argued that the Waqf Act is applied only in the disputes arising between Muslims. In support of his argument, he relied upon paragraph 7 of the judgement of this Court passed in the case of Ajodhya Prasad Vs. Additional Civil Judge Muradabad and others reported in 1995 All C.J. Page 1159 Paragraph 7 of the aforesaid judgement is quoted below:-

“The very object of the waqfs Act is to provide for better administration and supervision of waqfs and the Board has been given powers of superintendence over all waqfs which vest int he Board. This provisions seem to have been made in order to avoid prolongation of triangular disputes between the waqfs Board, (the mutwalli and a person interested in the waqf) who would be a person of the same community). It could never have been the intention of the

legislature to cast a cloud on the right, title or interest, of a persons who are not Muslims, That is, if a person who is non-muslim whether, whether he be a christain, a Hindu, a Sikh, a Parsi or of any other religious denomination, and if he is in possession of acertain propersy his right, title and interest can-not be put in jeopardy simply because that property is included in the list published under sub-section (2) of Section 5. Emphasis supplied)”

Sri Vijay Shankar Rastogi further argued that in paragraph 33 of the written statement filed in the Suit No.610 of 1991 pending before the lower Court by the defendant, it is mentioned that the this property has been registered in the office of Sunni Central Board of Waqfs Lucknow under Section 30 of the U.P. Muslim Waqfs Act 1960 while in the written argument in the aforesaid Suit, the stand taken by the defendant that property in dispute has been registered under the Waqf Act, 1954. It is argued that from perusal of the same, it is clear that the defendant itself is not clear that under which Act and in which year, the property in dispute has been registered as Waqf property. It is argued that there is no evidence in this regard given by the defendant before any Court. He further argued that the Waqf Act, 1954 had never been applicable in the State of U.P. at any point of time.

Sri Rastogi further argued that before 1976, Order XIV Rule 2 provided that the court below was duty bound to decide the preliminary issue as first but after amendment in the year 1976, it is not mandatory for the Court to decide the preliminary issue first. In support of its arguments, he relied upon paragraph Nos.10 and 11 of the Full Bench Judgment of this Court passed in the case of Sunni Central Waqf Board and others Vs. Gopal Singh Vishrad and others reported in 1991 All. L.J. Paragraph Nos.10 and 11 of the aforesaid judgment is quoted below:-

“(10) Order 14, R.2 of the Code of Civil Procedure as it stood prior to the amendment made in the year 1976 read as follows :-

“Rule 2. Where issues both of law and of fact arise in the same suit, and the Court is of Opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.”

(Emphasis supplied)

Under the above provision once the court came to the conclusion that the case or any part thereof could be disposed of on the issues of law only it was obliged to try those issues first and the other issues could be taken only thereafter, if necessity survived. The court had no discretion in the matter. This flows from the use of the words “it shall try those issues first”. Material change has been brought about in legal position by amended O. 14, R. 2 which reads as follows :

“Rule 2(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to —

(a) the jurisdiction of the Court, or,

(b) a bar to the suit created by any law for the time being in force.

and for that purpose may, if it thinks ‘fit, Postpone the settlement of the other issues until after that issue’.

(Emphasis supplied).

This amendment had been made by Act 104 of 1976 which came into effect on 1-2-1977.

11. The word “shall” used in old O. 14, R. 2 has been replaced in the present Rule by the word “may”. Thus now it is discretionary for the Court to decide the issue of law as a Preliminary issue or to decide it along with the other, issues. It is no longer obligatory for the Court to decide an issue of law as a Preliminary issue."

It is argued that it is clear from the averments of the plaint that the property in question, i.e. the temple of Lord Visheshwar has been in existence from ancient time, i.e., Satyug (सतयुग) up till now and the Swayambhu Lord Visheshwar is situated in the disputed structure. It is further argued that if the temple has been destroyed by any means, the religious character never changed, therefore,

Section 4 of the Places of Worship (Special Provisions) Act, 1991 is not applicable because the structure of old temple was built prior to the 15th Century.

Due to paucity of time, arguments could not be concluded.

List this matter along with other connected matters on 28.04.2022 at 2:00 p.m. for further hearing.

Order Date :- 12.4.2022
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