

Court No. - 3

Case :- MATTERS UNDER ARTICLE 227 No. - 1521 of 2020

Petitioner :- Anjuman Intezamiya Masajid Varanasi

Respondent :- Ancient Idol Of Swayambhu Lord Vishweshwar And 5 Others

Counsel for Petitioner :- Syed Ahmed Faizan, Syed Farman Ahmad Naqvi (Senior Adv.), Zaheer Asghar

Counsel for Respondent :- Punit Kumar Gupta

Hon'ble Ajay Bhanot, J.

An interim order was passed by this Court on 13.10.1998 in Writ Petition No. 32565 of 1998 (current registration is Matters Under Article 227 No. 3341 of 2017), Anjuman Intezamiya Masajid Varanasi Vs. Ist Additional District Judge, Varanasi and Others, is reproduced hereinunder:

"Untill further orders by this court further proceeding pursuant to order dated 23.09.1998 in suit no. 610 of 1991 pending in the court of 2nd respondent shall remain stayed."

Placing reliance on a judgment of the Hon'ble Supreme Court in **Asian Resurfacing of Road Agency Pvt. Ltd. and another Vs. Central Bureau of Investigation**, reported at **2018 (16) SCC 299**, the learned trial court in the impugned order dated 04.02.2020, has held that the interim order dated 13.10.1998 is no longer subsisting and has commenced with the trial proceedings.

Shri S.F.A. Naqvi, learned Senior Counsel assisted by Shri F. Husain, learned counsel for the petitioner submits that the learned trial court was misdirected in law to find that the interim order dated 13.10.1998 was not subsisting by relying on the judgment of the Hon'ble Supreme Court in Asian Resurfacing(supra). He calls attention to the various provisions of the Constitution to contend that the observations of the Hon'ble Supreme

Court in Asian Resurfacing(supra) will not apply to the facts of this case and the interim order dated 13.10.1998, passed by this Court still survives.

The learned Senior Counsel submits that the directions issued by the Hon'ble Supreme Court in paragraphs 36 and 37 of the **Asian Resurfacing (supra)**, do not fall within the purview of law declared by the Hon'ble Supreme Court under Article 141 of the Constitution of India which is binding on all the Courts. The paragraphs 36 and 37 of the **Asian Resurfacing (supra)** are reproduced below:

"36. In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.(emphasis supplied)

Article 141 of the Constitution of India being relevant to the submissions, are extracted hereinunder:

"**Article 141. Law declared by Supreme Court to be binding on all courts.** – The law declared by the Supreme Court shall be binding on all courts within the territory of India."

Taking his submission further, the learned Senior Counsel would contend that the aforesaid observations of the Hon'ble Supreme Court in **Asian Resurfacing (supra)** on which reliance has been placed are relatable to Article 142 of the Constitution of India. The directions have been issued in

exercise of the extraordinary powers vested in the Hon'ble Supreme Court by Article 142 of the Constitution of India.

It is then contended that while all courts and authorities have to implement the orders of the Hon'ble Supreme Court with deference and in letter and spirit immediately after the judgments are rendered. However, orders under Article 142 of the Constitution of India can be enforced only in the manner prescribed therein. Article 142 of the Constitution of India being one of the spear points of the argument of the petitioner, is reproduced below:

"142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc:

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

It is asserted by the learned Senior Counsel that the directions in **Asian Resurfacing (supra)** can be made enforceable throughout the territory of India including the State of Uttar Pradesh only in the manner prescribed by or under any law made by the Parliament and until such provision in that behalf is so made, in such manner as the President may by order prescribe under Article 142 of the Constitution of India. However, according to the learned Senior Counsel, the law made by Parliament or Presidential order

contemplated under Article 142 of the Constitution of India was not placed before the learned trial court and the learned trial court was thus led into error.

Considering the fact that submissions made on behalf of the petitioner may have serious repercussions on a large number of other cases, learned advocates from the Bar at large are also invited to assist the Court in this matter.

Matter needs consideration.

Shri Ajay Kumar Singh, learned counsel for the respondent could not refute the aforesaid submissions. He has raised some preliminary objections. These objections shall be considered on 17.03.2020.

Till the next date of listing, the effect and operation of the order dated 04.02.2020 passed in Original Suit No. 610 of 1991(annexed as annexure 1 to the petition) shall remain stayed.

Put up this case on 17.03.2020 in the additional cause list at 02:00 PM.

The records of Writ Petition No. 32565 of 1998 (current registration is Matters Under Article 227 No. 3341 of 2017), Anjuman Intezamiya Masajid Varanasi Vs. 1st Additional District Judge, Varanasi and Others, shall also be placed before the Court. In case pleadings are complete and this Court has the determination, this Court may proceed further in the matter.

Order Date :- 26.2.2020/Dhananjai