

48

SUPREME COURT CASES

(1994) 2 SCC

decree generally against the entire land minus that occupied by the houses, and against all the defendants together. Defendant 1 had preferred an appeal before the District Court challenging the decree granted by the trial court against the entire land viz., that belonging to himself and to all the other defendants. It is that appeal which was decided on merits by the appellate court notwithstanding the death of defendant 2 during the pendency of the appeal. Thus, granting decree in favour of defendant 1 alone when it was not claimed by the plaintiff in the original suit, and based upon a common right asserted against the entire land which was the relief claimed by the plaintiffs, would in the present case result in contradictory findings viz., that whereas the customary right could not be claimed against any portion of the suit property (that is the finding of the High Court), the trial court's decree for exercise of such rights would continue to operate against a part of the land merely because the other defendants had not preferred any appeal.

16. We find that in the circumstances, this was a fit case where the High Court ought to have exercised its power under Order 41, Rule 33. In fact, the non-exercise of the power has resulted not only in the miscarriage of justice but in contradictory results in respect of the same subject-matter and based on the same alleged right. In this connection, we may refer to the decisions of this Court in *Mahabir Prasad v. Jage Ram*², *Harihar Prasad Singh v. Balmiki Prasad Singh*³, *Giani Ram v. Ramji Lal*⁴ and *Koksingh v. Deokabai*⁵ to support our conclusion.

17. We, therefore, allow the appeal, modify the decision of the High Court and dismiss the plaintiff's suit in respect of the entire property. In the circumstances of the case, there will be no order as to costs.

(1994) 2 Supreme Court Cases 48

(BEFORE M.N. VENKATACHALIAH, C.J. AND S. MOHAN AND
DR A.S. ANAND, JJ.)

MOHD. ASLAM ALIAS BHURE .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 611 of 1993, decided on September 24, 1993

Constitution of India — Art. 32 — Petition seeking Court's directions in respect of preservation of places of worship viz. Gyanvapi Masjid and Vishwanath temple at Varanasi and Krishna temple and Idgah at Mathura — Where matter which needs appropriate evaluation and action by Executive, Courts action not called for — State and Union Govts. directed to take all necessary steps for safeguarding the religious places

Writ petition disposed of R-M/12686/C

2 (1971) 1 SCC 265

3 (1975) 1 SCC 212

4 (1969) 1 SCC 813; (1969) 3 SCR 944

5 (1976) 1 SCC 383

ORDER

a 1. Shri Mohd. Aslam alias Bhure seeks the intervention of the Court in what is urged as a serious and urgent matter of public concern with regard to the preservation of certain places of worship in the country.

2. The prayers sought in this petition are:

b “(i) directing the respondents to take steps for safeguarding of religious places i.e. Gyanvapi Masjid and Vishwanath temple at Varanasi and Krishna temple and Idgah at Mathura;

(ii) to take steps to provide appropriate security of these places for restraining any person from causing any mischief to these places;

(iii) to regulate the entry of devotees to these places so that mob of large number of persons should not assemble near these places for causing any damage;

c (iv) to take over/manage the Gyanvapi Masjid and Vishwanath temple and Krishna temple and Idgah at Mathura in public interest by Central Government;

d (v) to register cases as per provisions of ‘Places of Worship (Special Provision) Act, 1991’ against any person who violates the Act by causing damage or converting these places from their existing religion to religion of other denomination;

e (vi) direct the Central Government to take steps against BJP, VHP, Bajrang Dal, RSS by restraining them from converting Idgah at Mathura and Gyanvapi Masjid at Varanasi to Hindu temple for their political benefits and in violation of the ‘Places of Worship (Special Provision) Act, 1991’.

f 3. The prayers at (iv) and (vi), in our opinion, are not matters which can be dealt with by the Court on the state of the present pleadings. These prayers are not susceptible of an adjudication on the material placed before the Court. The matter is eminently one for appropriate evaluation and action by the Executive, and may not have an adjudicative disposition or judicially manageable standards as the pleadings now stand. We find no justification to issue notice to the respondents on these prayers at (iv) and (vi).

g 4. So far as prayer (v) is concerned, it is the statutory obligation of the State to enforce the provisions of the Act. It does not need reiteration that that duty is *a fortiori* in matters of such serious public concern. In view of the plain obligations of the State to enforce the law, any direction on the hypothetical possibility of violation, amounts to no more than recanting the provisions of the statute itself.

h 5. What remain to be considered are the prayers at (i), (ii) and (iii). We have heard Shri O.P. Sharma, learned Senior Counsel for the petitioner; Shri Milon K. Banerjee, learned Attorney General for the Union of India and Shri A.K. Ganguly, learned Senior Counsel for the State of Uttar Pradesh and its officers.

50

SUPREME COURT CASES

(1994) 2 SCC

6. The District Magistrates of Mathura and Varanasi and the Home Secretary to the State Government of Uttar Pradesh are present in Court. Learned Attorney General submitted that after the events of December 6, 1992, both the Central and the State Governments are keenly alive to the need for an appropriate heightened security environment respecting places of worship referred to, and that the Governments are straining every nerve and resource to ensure such safety. Learned Attorney General submitted that adequate security measures for safeguarding these places of worship have been evolved and are in operation. He also submitted that it would not be appropriate in public interest to make a public disclosure of the details of the security preparations.

7. Shri A.K. Ganguly, upon instructions from the District Magistrates and the Home Secretary, submits that the prayers sought for by the petitioner are, indeed, the subject-matter of deep, anxious and committed concern of the Government and all precautions and safety measures have been evolved and are in operation in respect of these places of worship.

8. In view of these submissions, no specific directions on the prayers at (ii) and (iii) are necessary as the Governments — States and Union — say that they are keenly alive to the problem and have taken adequate steps and that these measures are already in operation.

9. We accordingly dispose of this writ petition by directing the State and Union Governments to take all necessary steps for safeguarding the religious places as prayed for in prayer (i).

10. The impleadment applications are dismissed.

(1994) 2 Supreme Court Cases 50

(BEFORE M.M. PUNCHHI AND B.P. JEEVAN REDDY, JJ.)

AMIR AHMAD AND OTHERS . . . Appellants;

Versus

RAM NIWAS AGRAWAL AND OTHERS . . . Respondents.

Civil Appeal No. 6006 of 1993[†], decided on November 19, 1993

Municipalities — U.P. Municipalities Act, 1916 (2 of 1916) — S. 9(d) Explan. — Ex officio member of Municipal Board — Place of residence of members of Council of States or State Legislative Council for the purpose of his membership in a particular Municipal Board mentioned in notification of election/nomination relevant — Change of residence after his election/nomination not relevant — Words and phrases — ‘residence’

Interpretation of Statutes — Subsidiary rules of interpretation — Construction which would render a provision redundant should not be adopted

From the Judgment and Order dated August 12, 1993 of the Allahabad High Court in W P No 12911 of 1990