

Judgment reserved on 10-06-2022

Judgment delivered on 19-07-2022

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 350 of 2022

Petitioner :- Sudhir Singh And 6 Others

Respondent :- Union Of Bharat Thru Its Cabinet Secy. South Block New Delhi And 3 Others

Counsel for Petitioner :- Asok Pande, Ankit Mishra, Parmanand Sharma

Counsel for Respondent :- A.S.G.I., C.S.C.

Hon'ble Rajesh Singh Chauhan J.

Hon'ble Subhash Vidyarthi J.

(Delivered by Hon'ble Subhash Vidyarthi J.)

1. Heard Sri Asok Pande, the learned counsel for the petitioners, Sri Vinod Kumar Shahi, the learned Additional Advocate General of U.P. and Sri Abhinav Narayan Trivedi, the learned Chief Standing Counsel for the respondent nos. 2 and 3, Sri Surya Mani Singh Royekwar, the learned Counsel for the Union of India and Archaeological Survey of India, respondent nos. 1 and 4, who has filed his memo of appearance.

2. The instant petition, which has been styled as a Public Interest Litigation, has been filed by 7 persons praying that a direction be issued "to appoint a Committee / Commission headed by a Judge of the High Court or Supreme Court (sitting or retired) to study the nature of structure found in the Gyan Vapi Campus to ascertain as to whether it is Shivlinga, as being claimed by the Hindus or it is a fountain as being claimed by few of the Muslims and to direct the concerned respondents to act accordingly to such report means if it is a Shivlinga then permit the devotees to pray it as per rituals and if it is found fountain then make it functional".

3. At the outset, Sri Abhinav Narayan Trivedi, the learned Chief Standing Counsel has raised the following preliminary objections against maintainability of the Writ Petition:-

(i). Several Suits are pending in the Civil Court at Varanasi regarding the structures existing in Gyanvapi Parisar, Varanasi and, therefore, this Writ Petition concerning the same subject matter should not be entertained by this Court.

(ii). As per the orders of the Hon'ble Supreme Court passed in Special Leave Petition (Civil) No. 9388 of 2022, the suits filed at Varanasi concerning the controversy relating to Gyan Vapi Compound which were pending in the court of Civil Judge (Senior Division) Varanasi, have been transferred to the Court of District Judge, Varanasi. The aforesaid Special Leave Petition is still pending before the Hon'ble Supreme Court and it is fixed for 21.07.2022 and, therefore, it would not be proper for this Court to entertain a petition while the dispute is pending in the form of various civil suits before the District Judge, Varanasi and it is also engaging the attention of the Hon'ble Supreme Court in the aforesaid pending Special Leave Petition.

(iii). The subject matter of the writ petition is Gyan Vapi Campus situated at Varanasi and it falls within the territorial jurisdiction of this High Court sitting at Allahabad. Therefore, this Court sitting at Lucknow has no territorial jurisdiction to entertain this petition and the petition is liable to be dismissed for want of territorial jurisdiction.

(iv). The learned State Counsel has vehemently opposed the petition and has submitted that the writ petition does not disclose the credentials of the petitioners and the only thing pleaded in this regard is that the petitioners are the followers of *Sanatan Dharma*. The petition which has allegedly been filed in Public Interest, is not maintainable, unless the petitioners disclose their credentials so as to establish that they have actually approached this Court in public interest only. Placing reliance on a

decision of the Hon'ble Supreme Court in the case of **Ardhendu Kumar Das Versus State of Odisha and others**, 2022 SCC OnLine SC 718, the learned State Counsel has submitted that the writ petition filed purportedly in public interest is actually designed to obtain publicity only and, therefore, it is liable to be dismissed at the threshold.

4. When the Court called upon the learned counsel for the petitioners to give a reply to the preliminary objections raised by the learned State Counsel, he categorically stated that he is not bound to reply to each and every submission made by the learned State Counsel. However, when this Court put a question to the learned counsel for the petitioners as to how a Writ Petition can be entertained by this Court in respect of the subject matter which is already the subject matter of suits filed before the Civil Court at Varanasi, the learned Counsel for the petitioners stated that the relief claimed in the instant Public Interest Litigation has not been claimed in any of the suits and, therefore, pendency of the suit would not be a bar against filing of the Public Interest Litigation.

5. When called upon to address the Court on the point of maintainability of the Writ Petition before this Court sitting at Lucknow when the subject matter of the petition is situated at Varanasi, the learned Counsel for the petitioners submitted that Article 226 of the Constitution of India empowers every High Court to issue writs to any person or authority without any territorial fetters and in the past he had filed a Writ Petition in this Court regarding Ram Setu situated in the State of Tamil Nadu and that Writ Petition had been entertained without any objection regarding territorial jurisdiction. He further submitted that Article 226 of the Constitution of India does not contain any provision for separate Benches of the High Court. The territorial jurisdiction of this High Court sitting at Allahabad and at Lucknow has not been divided by the Constitution or by any statute.

6. The learned Chief Standing Counsel has informed that at least 5 regular suits bearing Regular Suit Nos. 350 of 2021, 358 of 2021, 693 of 2021, 839 of 2021 and 840 of 2021 have been filed in the Court of Civil

Judge (Senior Division) at Varanasi. In Regular Suit No. 350 of 2021, the following main reliefs have been claimed: -

“(A) Pass decree in the nature of declaration declaring that the Worshippers of Maa Goddess Shringar Gauri, Gooddness Maa Ganga, Lord Hanuman, Lord Ganeshji, Nandiji along with Lord Adi Visheshwar are entitled to have Darshan, Pooja and Worship of deities within the area of Settlement Polt No. 9130(Nine thousand One Hundred Thirty), measuring about 1 (One) Bhiga, 9 (Nine) Biswas and 6 (six) Dhoors situated at Dashashwamedh in the heart of city of Varanasi, Ward and police Station Dashashwamedh;

(B) Pass a decree in the nature of declaration declaring that the entire Avimukteshwar area belongs to deity Asthan Lord Adi Visheshwar in the radius of 5(Five) Kos (Krosh) from the principal seat at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty), measuring about 1(One) Bhiga, 9(Nine) Biswas and 6 (Six) Doors situated at Dashashwamedh in the heart of city of Veranasi, Ward and police Station Dashhashwamedh;

(C) Pass a decree in the nature of perpetual injunction against defendants prohibiting them, and their workers, agents, officers, officials and every person acting under them from interfering with or raising any objection or obstruction in the construction of New Temple building consisting of Maa Ganga, Goddess Maa Shringar Gauri along with Lord Ganesh, Nandi Ji and other subsidiary deities at Principle seat of Asthan Adi Visheshwar at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty), Measuring about 1 (One) Bhiga, 9 (Nine) Biswas and 6(Six) Doors situated at Dashashwamedh in the heart of city of Varanasi, Ward and Police Station Dashashwamedh after demolishing and removing the existing buildings and structures etc, situated thereat, in so far as it may be necessary are expedient to do so for the said purpose;

(D) Decree the suit of plaintiffs issuing Mandatory in junction directing defendant No.2 (Two) the Government of Uttar Pradesh and Defendant No.7(Seven) the Board of trustees of Kashi Vishwanath Temple, created under Shri Kashi Vishwanath Temple Act,1983 (Nineteen Eight Three) to restore pooja worship of Goddess Gauri Shringarji, Goddess Maa Ganga, Lord Hanuman, Lord Ganeshji, Nandiji along with Lord Adi Visheshwar and make appropriate arrangement for Darshan and Pooja by worshippers and maintain law and order situation;”

7. In Regular Suit No. 358 of 2021, the reliefs claimed are as follows:

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“(A) Pass a decree in the nature of declaration declaring that the worshippers of Goddess Maa Ganga, Maa Goddess Shringar Gauri, Lord Hanuman, Lord Ganeshji, Nandiji alongwith Lord Adi Visheshwar are entitled to have Darshan, Pooja and Worship of deities within the area of Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty), measuring about 1 (One) Bhiga, 9 (Nine) Biswas and 6 (Six) Dhors situated at Dashashwamedh in the heart of city of Varanasi, Ward and police Station Dashashwamedh;

(B) Pass a decree in the nature of declaration declaring the entire Avimukteshwar area belongs to deity Asthan Lord Adi Visheshwar in the radius of 5 (Five) Kos (Krosh) from the principal seat at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty), measuring about 1 (One) Bhiga, 9 (Nine) Biswas and 6 (Six) Doors situated at Dashashwamedh in the heart of city of Varanasi, Ward and police Station Dashashwamedh.

(C) Pass a decree in the nature of perpetual injunction against defendants prohibiting them, and their workers, agents, officers, officials and every person acting under them from interfering with, or raising any objection or obstruction in the construction of New Temple building consisting of Maa Ganga, Goddess Maa Shringar Gauri alongwith with Lord Ganesh, Nsandi Ji and other subsidiary deities at principal seat of Asthan Adi Visheshwar at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty), measuring about 1 (One) Bhiga, 9 (Nine) Biswas and 6 (Six) Dhors situated at Dashashwamedh in the heart of city of Varanasi, Ward and Police Station Dashashwamedh After demolishing and removing the existing buildings and structures etc, situated thereat, in so far as it may be necessary are expedient to do so for the said purpose;

(D) Decree the suit of plaintiffs issuing Mandatory in junction directing defendant No. 2 (Two) the government of Uttar Pradesh abd Defendant No. 7 (Seven) the Board of trustees of Kashi Vishwanath Temple, created under Shri Kashi Vishwanath Temple Act, 1983 (Nineteen Eighty Three) to restore pooja Darshan and performance of rituals related to Lord Adi Visheshwar and also the ritual of jalabhishl with fresh Gangajal of the Jyotirlingam along with Goddess Gauri Shringarji, Lord Hanuman, Lord Ganeshji, Nandiji at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty), measuring about 1 (One) Bhiga, 9 (Nine) Biswas and 6 (Six) Dhors situated at Dashashwamedh in the heart of city of Varanasi, Ward and police station Dashashwamedh and make appropriate arrangement for Darshan and Pooja by worshippers and maintain law and order situation.”

8. In Regular Suit No. 693 of 2021, the following reliefs have been claimed: -

“(A) Decree the suit for declaration declaring that Plaintiffs are entitled to have Darshan, Pooja and perform all the rituals of Maa Sringer Gauri, Lord Ganesh, Lord Hanuman and other visible and invisible deities within old temple complex situated at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty) in the area of Ward and P.S. Dashashwamedh District Varanasi.

(B) Decree the suit for permanent injunction restraining the Defendants from imposing any restriction, creating any obstacle, hindrance or interference in performance of daily Darshan, Pooja, Arti, Bhog and observance of rituals by devotees of Goddess Ma Sringer Gauri at Asthan of Lord Adi Visheshwa along with Lord. Ganesh, Lord Ganesh, Lord Hanuman, Nandiji and other visible and invisible deities within old temple complex situated at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty) in the area of Ward and P.S. Dashashwamedh District Varanasi.

(C) Decree the suit for permanent injunction restraining the Defendants from demolishing, damaging, destroying or causing any damage to the images of deities Goddess Maa Sringer Gauri at Asthan of Lord Adi Visheshwar alongwith Lord Ganesh, Lord Ganesh, Lord Hanuman, Nandiji and other visible and invisible deities within old temple complex situated at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty) in the area of Ward and P.S. Dashashwamedh District Varanasi.

(D) Decree the suit for mandatory injunction dircting the Government of Uttar Pradesh and District Administration to make every security arrangement and facilitate daily Darshan, Pooja, Aarti, Bhog by devotees of Maa Sringer Gauri along with Lord Ganesh, Lord Hanuman, Nandiji and other images and deities within the precincts of temple complex known as 'Ancient temple' existing at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty) in the area of Ward and P.S. Dashashwamedh District Varanasi.”

9. In Regular Suit No. 839 of 2021, the following reliefs have been claimed: -

“Declare that the plaintiffs No. 1 (One)-Deity is the owner of settlement land No. 9130 (Nine Thousand One Hundred Thirty) situated at Ward and P.S. Dashashwamedh Dist. Varanasi as the property vested in the deity much before Sat Yuga Beyond the memory of human being and Defendant Nos. 01 (One)

and 2 (Two), their workers, supporters, men, attorneys and every person acting under them have no right to enter upon or use the aforesaid land and property in any manner or to make any interference in the Pooaj and worship and daily rituals of the diety within the property in suit i.e. old Shri Aadi Visheshwar Temple Complex and decree of declaration be passed to that effect in favour of the Plaintiffs and against the defendants;

(B) Declare that registration No. 100 (One hundred) made by U.P. Sunni Central Waqf Board in regard to any portion of land No. 9130 (Nine Thousand One Hundred Thirty) situated at Ward and P.S. Dasaswamedh Dist. Varanasi is having no sanction of law, illegal, ultra vires, null and void and decree of declaration be passed to that effect in favour of the Plaintiffs and against the Defendants;

(C) Issue mandatory injunction directing Defendants No. (One) and 2 (Two) to remove the super structure raised over Aadi Visheshwar Jyotirlinga situated at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty) within Ward and P.S. Dashashwamedh District Varanasi within the time provided by the Hon'ble Court failing which same may be removed through the executing agency of the Hon'ble court and decree in the nature of mandatory injunction be passed to that effect in favour of the Plaintiffs and against the Defendants.

(D) Issue mandatory injunction directing the Board of Trustees, the Defendant No. 3 (Three) to re-construct Shri Aadi Visheshwar Temple at the place of "Jyotirlinga" existing within old temple complex at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty) within Ward and P.S. Dashashwamedh District Varanasi after removal of the present structure thereat and to ake arrangement for Pooja, Bhog, performance of rituals of the deity and Worship to be performed by devotees and decree in the nature of mandatory injunction be passed to that effect in favour of the Plaintiffs and against the Defendants.

(E) Issue permanent injunction restraining the Defendants No. 1 (One) and 2 (Two), their workers, agents, officers, officials and every person acting under them from interfering with, or raising any objection or obstruction in the construction of new temple of Lord Aadi Visheshwar at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty) within Ward and P.S. Dashashwamedh District Varanasi after demolishing and removing the existing

building/structure situated thereat, in so far as it may be necessary or expedient to do so for the said purpose and decree in the nature of permanent injunction be passed to that effect in favour of the Plaintiffs and against the Defendants;”

10. In Regular Suit No. 840 of 2021, the relief claimed are as follows: -

“(A) Declare that Nandiji seated within Shri Kashi Vishwanath Temple Complex is entitled to have darshan of Lord Aadi Visheshwar Jyotirlinga situated at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty) within Ward and P.S. Dashashwamedh District Varanasi and is entitled to worshipped by devotees of Lord Shiva and Plaintiffs Devotees have right to get blessing from Nandiji before and after Darshan and Pooja of Jyotirlinga following the ordain provided in scriptures of Sanatan Dharma and decree of declaration be passed to that effect in favour of the plaintiffs and against the Defendants;

(B) Issue mandatory injunction directing the Defendants No. 01 (One) and 2 (two) to remove the super structure raised over Aadi Visheshwar Jyotirlinga situated at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty) within Ward and P.S. Dashashwamedh District Varanasi and therefore the Board of Trustees the Defendant No. 3 (Three) to make every arrangement for Darshan and Pooja thereat by the devotees and worshippers and to maintain Law and Order situation and decree to that effect in favour of the Plaintiffs and against the Defendants;

(C) Issue permanent injunction restraining the Defendant No. 1 (One) and 2 (Two), their workers, agents, officers, officials and every person acting under them from interfering with or raising any objection or obstruction in the construction of new temple of Lord Aadi Viseshwar at Settlement Plot No. 9130 (Nine Thousand One Hundred Thirty) within Ward and P.S. Dashashwamedh District Varanasi after demolishing and removing the existing building/structures situated thereat, in so far as it may be necessary or expedient to do so for the said purpose and decree in the nature of permanent injunction be passed to that effect in favour of the Plaintiffs and against the Defendants;

(D) Decree the suit for such others reliefs for which the Plaintiffs may be found entitled to or which may be deemed necessary to be passed for proper adjudication of the case and in the interest of justice.”

11. In the case of **Committee of Management Anjuman Intezamia Masjid Varanasi v. Rakhi Singh**, Special Leave Petition (Civil) No. 9388 of 2022, the Hon'ble Supreme Court passed the following order on 17-05-2022, which is reported in 2022 SCC OnLine SC 694: -

“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.”

12. On 20-05-2022, the Hon’ble Supreme Court has been pleased to pass the following order in the aforesaid case, which is reported in 2022 SCC OnLine SC 696: -

“1. Having regard to the complexity of the issues involved in the suit and their sensitivity, we are of the considered view that the suit pending before the Civil Judge, Senior Division, Varanasi (Civil Suit No 693 of 2021) should be tried before a senior and experienced judicial officer of the Uttar Pradesh Higher Judicial Service.

2. We accordingly order and direct that:

(i) Civil Suit No 693 of 2021 shall stand transferred from the file of the Civil Judge, Senior Division, Varanasi to the court of the District Judge, Varanasi for trial and all interlocutory and ancillary proceedings in the suit shall be addressed to and decided by the court of the District Judge;

(ii) The application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure 1908 shall be decided on priority by the District Judge upon the transfer of the suit;

(iii) Since parties are appearing on notice, all orders in the suit shall be passed upon hearing the parties;

(iv) The interim order of this Court dated 17 May 2022 shall continue to remain in operation pending the disposal of the application under Order VII Rule 11 CPC and thereafter for a period of eight weeks so as to enable any party which is aggrieved by the order of the District Judge to pursue its rights and remedies in accordance with law;

(v) Unless adequate arrangements for ensuring the due observance of Waju have already been made by the District Magistrate, we direct the District Magistrate, in consultation with the parties, to ensure that appropriate arrangements are made for the religious observance; and

(vi) The order passed by the Civil Judge, Senior Division, Varanasi on 16 May 2022 shall stand subsumed by the terms of the order of this Court dated 17 May 2022, pending further orders.

3. These proceedings shall be listed on 21 July 2022.”

13. By means of the instant petition, the petitioners have sought a direction to the respondents to appoint a Committee / Commission to study the nature of the structure found in the Gyanvapi Campus. The structures existing in Gyanvapi compound at Varanasi are already the subject matter of dispute in various civil suits mentioned above and in Civil Suit No. 693 of 2021 a declaration has been sought regarding the right to perform all the rituals of "visible and invisible deities" within the temple complex situated at Settlement Plot No. 9130 in the area of Ward and Police Station Dashashwamedh, District Varanasi. In Suit No. 350 of 2022 a declaration has been sought to the effect that the worshippers of Maa Goddess Shrigar Gauri, Goddess Maa Ganga, Lord Hanuman, Lord Ganeshji, Nandiji alongwith Lord Adi Visheshwar are entitled to have Darshan, Pooja and Worship of the deities within the area of Settlement Plot No. 9130, measuring about 1 Bigha, 9 Biswas and 6 Dhooors situated at Dashwaamedh in the heart of City of Varanasi, Ward and Police Station Dashashwamedh.

14. A commission for local inspection has already been issued and it has been carried out in Civil Suit No 693 of 2021 under orders passed by the Civil Judge (Senior Division), Varanasi and as per the plaintiffs, a Shivlinga has been found during local inspection of the site by the Commissioner appointed by the Court and this claim is being disputed by the other side and having regard to the complexity of the issues involved,

the Hon'ble Supreme Court has directed that the aforesaid Civil Suit shall be transferred to the Court of the District Judge, Varanasi, for trial and all interlocutory and ancillary proceedings in the suit have also been directed to be decided by the District Judge, Varanasi. The Special Leave Petition is still pending before the Hon'ble Supreme Court.

15. Keeping into consideration the aforesaid facts, we are of the considered opinion that it is not proper on the part of the petitioners to invoke the jurisdiction of the High Court by filing a Public Interest Litigation seeking a relief regarding the subject matter, which is already the subject matter of the pending suits as also of the aforesaid Special Leave Petition. For the aforesaid reason, we are not decline to entertain the Writ Petition.

16. However, since the learned Chief Standing Counsel has raised a preliminary objection against maintainability of the Writ Petition on the ground of lack of territorial jurisdiction and the learned Counsel for the petitioner has advanced his submissions in reply to the aforesaid preliminary objection, we think it appropriate to deal with the same also. The relevant portion of the Article 226 of the Constitution of India provides as follows:-

“226. Power of High Courts to issue certain writs: -

(i) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(ii) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(iii).....”

(Emphasis Supplied)

17. A perusal of the Article 226 of the Constitution of India makes it manifest that it confers power upon every High Court to issue directions, orders or writs throughout the territories in relation to which it exercises jurisdiction. Clause (2) of the Article 226 of the Constitution of India further provides that the power to issue directions, orders or writs may be exercised by any High Court exercising jurisdiction in relation to the territory within which the cause of action wholly or in part arises for exercise of such power, notwithstanding that the seat of the Government, authority or the residence of any person to whom direction, order or writ is to be issued, is not within those territories.

18. Article 226 of the Constitution of India confers powers on this Court to issue writs to any person or authority throughout the territories in relation to which it exercises jurisdiction, and it can issue writs in relation to the territories within which the cause of action for exercising such power arises. Therefore, the submission of the learned Counsel for the petitioners that Article 226 of the Constitution of India empowers every High Court to issue writs to any person or authority and Article 226 of the Constitution of India does not put any territorial fetters on the powers of the High Court, is without any substance and the same is rejected.

19. The submission of the learned Counsel for the petitioners that in the past he had filed a Writ Petition in this Court regarding Ram Setu situated in the State of Tamil Nadu and that Writ Petition had been entertained without any objection regarding territorial jurisdiction is too vague to warrant any consideration. He has not submitted copy of any judgment which can be treated as a binding precedent. He has not even cared to give any particulars of the judgment e.g. the number of the case or the date of its decision. In absence of a copy or the particulars of the judgment having been produced before this Court, we cannot ascertain as to whether the point of territorial jurisdiction was raised in that Writ Petition and if such

a point was involved in the Writ Petition, what ratio had been laid down by this Court while deciding the issue. Therefore, we reject the aforesaid submission of the learned Counsel for the petitioner.

20. The Uttar Pradesh High Courts Amalgamation Order, 1948 was published on 19.07.1948 and it was through this Order that the High Court in Allahabad and Chief Court in Oudh situated at Lucknow were amalgamated so as to constitute a new High Court by the name of 'High Court of Judicature at Allahabad'. Clause-14 of the Amalgamation Order provides as follows:-

“14. The new High Court, and the Judges and Division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appointed :

Provided that unless Governor of the United Provinces with the concurrence of the Chief Justice, otherwise directs such Judges of the new High Court, not less than two in number, as the Chief Justice, may, from time to time, nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court :

Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad.”

21. Historically, 12 districts, namely Lucknow, Hardoi, Kheri, Rai Bareli, Sitapur, Unnao, Faizabad, Ambedkar Nagar, Baharaich, Shravasti, Barabanki, Gonda, Balrampur, Pratapgarh, Sultanpur, were known as “Oudh Region” and these areas were within the jurisdiction of the Court of Judicial Commissioner, Oudh, Lucknow. After passing of the Amalgamation Order, as per the provision contained in the First Proviso appended to Clause 14 of the Amalgamation Order, this Court sitting at Lucknow continued to exercise jurisdiction in respect of the cases arising in areas falling in Oudh region.

22. The submission of the learned counsel for the petitioners is that the Amalgamation Order dated 19.07.1948 lost its efficacy after the

Constitution of India came into force on 26.01.1950. His submission is that Article 226 of the Constitution of India contains no provision limiting the territorial jurisdiction of this Court at Lucknow to the areas which were historically known as the 'Oudh Region' and this Court's jurisdiction is not limited to the areas of Oudh and the writ petition filed for the reliefs concerning the subject matter situate at Varanasi can be filed and entertained at Lucknow.

23. In the celebrated judgment in the case of **Nasiruddin vs State Transport Appellate Tribunal**, 1975 (2) SCC 671, which was a case decided long after coming into force of the Constitution of India, the Hon'ble Supreme Court held that:-

*"38. To sum up. Our conclusions are as follows. First, there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the Order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in Oudh from time to time. The areas in Oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third, the Chief Justice has power under the second proviso to para 14 of the Order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in Oudh areas shall be instituted or filed at Allahabad, instead of Lucknow is wrong. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to para 14 of the Order be directed to be heard at Allahabad. Fourth, the expression "cause of action" with regard to a civil matters means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. **If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad.** Fifth, a criminal case arises when the offence has been*

committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place.

39. Applications under Article 226 will similarly lie either at Lucknow or at Allahabad as the applicant will allege that the whole of cause of action or part of the cause of action arose at Lucknow within the specified areas of Oudh or part of the cause of action arose at a place outside the specified Oudh areas.”

(Emphasis Supplied)

24. As per the law laid down by the Hon'ble Supreme Court in **Nasiruddin (supra)** an application under Article 226 of the Constitution of India will lie at Lucknow if the petitioners allege that whole of the cause of action or a part thereof arose within the areas of Oudh.

25. The judgment of **Nasiruddin (supra)** was followed and reaffirmed by the Hon'ble Supreme Court in the case of **U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow Vs. State of U.P. and others**, 1995 (4) SCC 738, wherein the Hon'ble Supreme Court has held that, “*to decide the question of territorial jurisdiction it is necessary to find out the place where the "cause of action" arose. We, with respect, reiterate that the law laid down by a Four-Judge Bench of this Court in Nasiruddin's case holds good even today despite the incorporation of an explanation to Section 141 to the Code of Civil Procedure*”.

26. The law laid down by the Hon'ble Supreme Court in **Nasiruddin (supra)** and reaffirmed in **U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow (supra)** is binding on this Court and we find no force in the submission of the learned counsel for the petitioners that there is no law limiting the jurisdiction of this Court sitting at Lucknow to the cases in which the cause of action arose within the territorial limits of Oudh region.

27. We, therefore, hold that this Court sitting at Lucknow has no territorial jurisdiction to entertain this writ petition filed at Lucknow regarding the subject matter situate at Varanasi.

28. Now we proceed to deal with the last point raised by the learned State Counsel. The writ petition does not disclose the credentials of the petitioners and the only thing pleaded in this regard is that the petitioners are the followers of *Sanatan Dharma*. The sole ground taken in this petition reads as under:-

“A. Because it is necessary to ascertain the nature of the impugned structure found in the Gyan Vapi premises by a committee of the experts appointed by Govt. as well as the ASI so that in case it is Shivlinga as being claimed by the Hindus, the Bhog, Aarti, Prasad & Darshan of Lord Shiva may start without any further delay.”

29. The Writ Petition has not been filed on the ground of violation of any Fundamental right or any statutory right of the public at large, which may warrant the issuance of a Writ Petition. Existence of a legally enforceable right and denial or violation thereof is a pre-requisite for invoking the Writ jurisdiction of this Court under Article 226 of the Constitution of India.

30. **Ardhendu Kumar Das Versus State of Odisha and others**, 2022 SCC OnLine SC 718 was a case arising out of a public interest litigation filed in the Orissa High Court challenging the alleged unsanctioned and unauthorized construction activities undertaken within the prohibited area of the Shree Jagannath Temple Complex in contravention of the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958. The order passed by the High Court in the aforesaid Public Interest Litigation Petition was challenged by a person who was not the petitioner before the High Court, by filing a SLP before the Hon'ble Supreme Court. He had based his claim of locus on the basis of being 'ardent devotee of Lord Jagannath'. While dismissing the Special

Leave Petition, the Hon'ble Supreme Court made the following observations:-

“58. We, therefore, find no merit in the contentions raised on behalf of the appellants. We are of the considered view that the public interest litigation filed before the High Court rather than being in public interest, is detrimental to the public interest at large.

59. In the recent past, it is noticed that there is mushroom growth of public interest litigations. However, in many of such petitions, there is no public interest involved at all. The petitions are either publicity interest litigations or personal interest litigation. We highly deprecate practice of filing such frivolous petitions. They are nothing but abuse of process of law. They encroach upon a valuable judicial time which could be otherwise utilized for considering genuine issues. It is high time that such so called public interest litigations are nipped in the bud so that the developmental activities in the larger public interest are not stalled.”

31. The aforesaid observations of the Hon'ble Supreme Court squarely apply to the present petition, which has although been styled as a 'Public Interest Litigation', but which does not contain any mention of any legally enforceable right of the public at large having been infringed or denied and it appears that the petition has been filed merely in order to gain some publicity. The filing of a Public Interest Litigation for the oblique motive of gaining publicity, as held by the Hon'ble Supreme Court, needs to be nipped in the bud by dismissing the same at the admission stage itself.

32. In view the aforesaid discussion, the Writ Petition is **dismissed**. However, there will be no order as to costs.

Order Date - 19.7.2022

Jaswant

In this writ petition, the learned counsel for the petitioners has orally applied for issuance of a certificate for filing an appeal before the Hon'ble Supreme Court under Article 134-A (b) read with Article 133 (1) (a) & (b) of the Constitution of India.

The subject matter of the writ petition is already the subject matter of various suits filed before the Civil Court at Varanasi and the Hon'ble Supreme Court has passed an order in Special Leave Petition (Civil) No.9388 of 2022 transferring all the suits to the court of the District Judge, Varanasi and the aforesaid S.L.P. is still pending. We have decided the writ petition after taking into consideration and relying upon the law laid down by the Hon'ble Supreme Court on the points involved in the writ petition. Therefore, in our considered opinion, the matter does not involve any such question as may warrant issuance of a certificate for filing an appeal before the Hon'ble Supreme Court.

Accordingly, we are not inclined to grant the certificate as prayed for under Article 134-A (b) read with Article 133 (1) (a) & (b) of the Constitution of India, hence, we reject the said prayer.

(Subhash Vidyarthi,J.) (Rajesh Singh Chauhan,J.)

Order Date: 19.07.2022
Jashwant/Suresh