

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 3562 of 2021

Petitioner :- U.P Sunni Central Waqf Board

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

Counsel for Petitioner :- Punit Kumar Gupta

Counsel for Respondent :- Ajay Kumar Singh, Ajay Kumar Singh, Ashish Kumar Singh, Hare Ram, Manoj Kumar Singh, Tejas Singh, Vineet Pandey

Hon'ble Prakash Padia, J.

Heard Sri C S Vaidyanathan, learned Senior Counsel assisted by P.V. Yogeswaran, Advocate on record, Sri Ajay Kumar Singh and Sri Vijay Shankar Rastogi learned counsel for the contesting respondents and Sri Punit Kumar Gupta, learned counsel for petitioner.

Sri Syed Ahmad Faizan, learned counsel for petitioner and Sri Sunil Kumar Rastogi, Sri V.S. Rastogi, Sri Tejas Singh, Sri Chandra Shekhar Seth, Sri Bhakti Vardhan Singh and Tarun Tiwari, 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 Sri Hare Ram, Sri Vineet Sankalp and Sri Vijay Shankar Prasad, learned Standing Counsel for the respondent No.8 are also present.

Sri C S Vaidyanathan learned Senior Counsel argued that the order of stay was granted in the matter by this Court way back, i.e, on 13.8.1998 and thereafter the aforesaid stay order was never extended. He argued that Hon'ble Apex Court in ***Asian Resurfacing of Road Agency Ltd and another Vs. Central Bureau of Investigation*** reported in (2018) 16 SCC 299, it has been held that all orders staying the proceeding of any matter sub-judiced before the courts shall be treated automatically vacated after expiry of six months from the grant of stay, staying the proceedings. It is argued that even though during the period of Covid-19, the Hon'ble Apex Court in the ***Misc. Application No.1577 of 2020*** filed in the ***Asian Resurfacing of Road Agency Ltd (supra)*** observed that whatever stay has been granted by any court including the High Court automatically expires within a period of six months, and unless extension is granted for good reason, as per our judgment, within the next six months, the trial Court is, on the expiry of the first period of six months, to set a date for the trial and go ahead with the same. In this view of the matter, it is argued that the trial Court rightly proceeded with the matter to make survey by the Archaeological Survey of India on the application filed by the plaintiffs due to the fact that the aforesaid stay order was not extended.

Insofar as paragraph 18 of the writ petition is concerned in which averments were made by the petitioner regarding oral observations regarding oral observations made by this Court, it is argued that such kind of arguments should not be made especially in view of the law laid down by this Court in ***Associated***

Tubewells Ltd. Vs. R.B. Gujarmal Modi reported in A.I.R. 1957 SC 742. The relevant paragraph 5 of the judgement is quoted below:-

" Judges of this Court cannot be dragged into a controversy as to whether the statements ascribed to them are correct, or express correctly and fully what they had in view. What may have been said or expressed may often enough be in the course of tentative loud-thinking and may reflect only very partially what the Judges had in view. What ultimately weighs with the Judges in pronouncing the order, when doing so without giving reasons, may often be not reflected in what is tentatively and openly expressed. Judges cannot be drawn into controversy over such matters. It is not consistent with the dignity of the Court and the decorum of the Bar that any course should be permitted which may lead to controversy as to what a Judge stated in Court and what view he held. Such matters are to be determined only by what is stated in the record of the Court. That which is not so recorded cannot be allowed to be relied upon giving scope to controversy. To permit the atmosphere of the Court to be vitiated by such controversy would be detrimental to the very foundation of the administration of justice."

Sri C. S. Vaidyanathan further argued that for reaching a logical conclusion, the inquiry should be done and in this matter, the survey shall be done by the Archaeological Survey of India to bring out prima facie truth, watching the disputed premises with naked eyes, it is clear that this is the part of temple and the proceedings of survey should be continued.

In this view of the matter, the Court is of the view that the judgement should be reserved.

At this point of time, a request on behalf of Sri S.F.A. Naqvi, learned Senior Counsel for the defendant-petitioner has been made that Sri S.F.A. Naqvi is out of station and at least the matter should be adjourned for ten days.

Sri C S Vaidyanathan, learned Senior Counsel is ready and willing to appear before this Court again on the next date fixed by this Court.

List this matter again on 28.11.2022 at 12:00 noon for further/final arguments

It is made clear that Court will not adjourn the matter on the said date.

Order Date :- 11.11.2022
Saqlain/Swati