

The first respondent claiming to be the owner of some land in village Kuri, Tehsil Thakurdwara, District Moradabad, wanted to construct a mosque thereon. That was resisted by the villagers of Kuri on the ground that the land belonged to one Khilendra Singh and the first respondent was attempting to construct the mosque on the land of Khilendra Singh. It was pointed out that he was not even a resident of that village but was a resident of a distant village. As the first respondent's attempts were giving rise to a serious law and order problem and communally sensitive situation, the district authorities prevented the construction.

The first respondent filed a writ petition before the High Court alleging that the district authorities and the police were trying to interfere with his fundamental right to construct a mosque and offer namaz in his own land. He therefore sought a direction to the police and district authorities not to interfere with the proposed construction. The district administration and the police filed a counter pointing out that the identity of the land which the respondent claimed to be the owner was not clear and on the other hand, the land on which the first respondent wanted to put up the construction was part of plot No. 135 belonging to Khilendra Singh, that a Civil Suit filed by Khilendra Singh was pending in the court of Civil Judge, Thakurdwara, Moradabad and that the attempt by the first respondent was creating communal disharmony necessitating the issue of an order under Section 107/116 of Cr.P.C..

The High Court disposed of the Writ Petition by its order dated 28.1.1999. It stated that it did not propose to enter upon the controversy regarding title of the land pending in the civil suit. It held that having

regard to Article 25 of the Constitution of India, the first respondent was entitled to construct a mosque if he was the owner of the land. The court, however, ended the order by making a suggestion that the land should be used for construction of some school, hospital or technical institution for the benefit of the public.

The said order is challenged by the State Government in this appeal by special leave. According to them, the High Court judgment was being interpreted by the first respondent to mean that he can construct a mosque in the disputed land. We are of the view that there is no basis for such an interpretation. A careful reading of the order which makes a reference to Article 25 shows that what the court meant was that subject to public order, morality and health, and subject to any law regulating constructions, a person can in exercise of his right of ownership of his land, use his property for any lawful purpose including construction of a place of worship. Such an observation is not open to question.

As noticed above, the court has noticed that a civil suit was pending and has not gone into the question of title. The learned counsel for first respondent stated that the civil suit was subsequently disposed of. But that is not on record. Be that as it may.

In the circumstances, we dispose of this appeal with the clarification that the order of the High Court means that a person who is owner of a land can use it in accordance with law, subject to public order, morality and health and subject to any law regulating construction and land use.

[R.V. RAVEENDRAN]

.....J.
[K.S. RADHAKRISHNAN]

NEW DELHI
NOVEMBER 19, 2009

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7985 OF 2002

DISTRICT MAGISTRATE, VARANASI

.....APPELLANT(S)

Versus

COMMITTEE OF MANAGEMENT OF WAQF
OF NO.588 THRO' ITS PRESIDENT &
ANR.

.....RESPONDENT(S)

O R D E R

One Zahida Bibi was the owner of property in Varanasi. It is claimed that she died on 19.1.1978 bequeathing the property to religious and charitable purposes. The Committee of Management of the said Waqf (registered as Waqf No.588) filed a writ petition (No.16386/1999) alleging that the District Magistrate and the police (appellants herein) were interfering with the peaceful possession of the said property by the Waqf and also interfering with offering of namaz by the persons belonging to the Muslim faith in the said house. The said petition was disposed of by an order dated 20.4.1999 in terms of the order in Nathu Khan Vs. State of U.P. (WP No.10516/1998 decided on 27.3.1999) with a clarification that the appellant can offer namaz only in their house or in a mosque. The relied upon decision in Nathu Khan held that while persons belonging to Muslim faith can offer

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namaz in their property, no one shall, however, obstruct the road or cause any inconvenience.

2. The appellants herein filed an application before

the High Court on 24.5.1999 praying that in view of the tense situation prevailing in the city of Varanasi, the decision in the writ petition may be kept in abeyance till the final decision in the pending SLP in the case of Nathu Khan. The High Court dismissed the said application by order dated 19.11.1999, with an observation that if the order in Nathu Khan was modified by the Supreme Court, the appellants can make a suitable application for recall or modification of the order dated 20.4.1999. The said order dated 19.11.1999 on the modification application is challenged in this appeal.

3. It is not in dispute that the SLP filed by the State of U.P. in the case of Nathu Khan (SLP(C) No.12980/1999) was dismissed by this Court on 17.9.1999. As noticed above, the only prayer in the application for modification was that the order dated 20.4.1999 in the writ petition should be kept pending till the disposal of the said SLP in the case of Nathu Khan. The said SLP having been dismissed on 17.9.1999, the prayer in the modification application became infructuous.

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4. Nothing, therefore, survives in this appeal and it is, accordingly, dismissed as having become infructuous.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
November 19, 2009.

.....J.
(K.S. RADHAKRISHNAN)