MOHD. ASLAM @ BHURE

v.

UNION OF INDIA AND ORS.

MARCH 31, 2003

[S. RAJENDRA BABU, SYED SHAH MOHAMMED QUADRI, M.B. SHAH, N. SANTOSH HEGDE AND DORAISWAMY RAJU, JJ.]

Public interest litigation:

Acquisition of Certain Area at Ayodhya Act, 1993—Ayodhya land-dispute—Relating to erstwhile Ramjanma Bhoomi-Babri Masjid Structure—Subsequent enactment of 1993 Act—Title suits before High Court—Pendency—Writ petition before Supreme Court seeking preservation of adjacent land till final decision in title suits—Interim order passed directing status quo and prohibiting religious activity—Disposing of the writ petition—Held: Status quo having been maintained over a decade and title suits pending before High Court are reaching final stages, and also preservation of property in its original condition is absolutely necessary, it is not appropriate to disturb the state of affairs—Thus interim order to be operative until disposal of title suits in High Court.

There has been a long standing communal dispute relating to erstwhile Ram Janma Bhumi-Babri Masjid Structure in Ayodhya. This lead to the enactment of Acquisition of Certain Area at Ayodhya Act, 1993. The object was to maintain harmony between different communities in the country and to maintain public order for which it was necessary to acquire certain areas in Ayodhya. Thereafter claimants filed title suit claiming possession of disputed and adjacent land. The petitioner then filed the present public interest petition seeking preservation of adjacent land till final decision in title suit. This Court passed an interim order directing status quo and prohibited any religious activity at the acquired land which was modified later. Thereafter on completion of pleadings application was filed seeking vacation of interim order and final hearing of the petition.

Petitioner contended that the decision of this Court in *M. Ismail Faruqui's* case clearly indicates that the purpose of acquisition of the

A adjacent land is to meet the easement of necessity of proper enjoyment of the disputed land by its owner who is ultimately to be declared by the High Court and on consideration of the observations made by this Court with regard to the extent of the area required for carrying out the purpose of the Act would depend on the decision in favour of the Muslims or Hindus in respect of the disputed land and the scheme to be framed for purposes B of developing a complex consisting of museum, library and other structures, which cannot be done until the suits pending before the High Court are settled, therefore, the status quo passed in the interim order should be made absolute and an appropriate relief be granted.

C Respondents contended that the interim relief granted by this Court earlier goes beyond the scope of the decision rendered by this Court in *M. Ismail Faruqui's* case and the petition filed by the petitioner should be dismissed straightaway because he had filed a writ petition before the High Court which came to be dismissed and in this petition there is hardly any proper foundation laid for granting any relief; and that the allegations D made are vague and do not contain the necessary details to appreciate the various contentions urged before the Court and several of the prayers made in the petition have already become infructuous.

Disposing of the writ petition, the Court

E HELD: 1.1. The adjacent land, though vest in the Central Government, will have to be utilized in different manners depending upon the outcome of the litigation in respect of the disputed property pending in the High Court. The acquisition of larger extent of land is incidental to main purpose. Thus, the two acquired lands are intrinsically connected F with one another and cannot be separated at this stage of the proceedings for different treatment during the interregnum. Further, it has also been made clear that if any land becomes superfluous such land will have to be returned to the owner who may have to initiate appropriate proceedings to challenge the validity of the acquisition. If land is transferred to any other body or trust as provided under Section 6 of the Acquisition of G Certain Area at Ayodhya Act, 1993 at this stage further complications may arise. Therefore, *status quo* will have to be maintained until the suits are finally disposed of. The orders of this Court made earlier are not beyond the scope of the decision in *M. Ismail Faruqui's* case that the purpose of the acquisition of the adjacent land is to meet the easement of necessity of proper enjoyment of the disputed land by its owner. [154-C-F] H

1.2. Status quo has been maintained from 1992 onwards and no activities as are set out in the course of the application have been required to be done so far. When for a long time, a particular state of affairs has prevailed - as in the present case for over a decade - and when the adjudication of the disputes which are pending before the High Court are reaching final stages, and it is well known that preservation of property in its original condition is absolutely necessary to give appropriate reliefs to the parties on the termination of the proceedings before the courts it will not be appropriate to disturb that state of affairs. Therefore, the interim order made by this Court as modified should be operative until disposal of the suits in the High Court not only to maintain communal harmony but also to fulfil other objectives of the Act. [154-G, H; 155-A, B]

M. Ismail Faruqui etc. **v.** *Union of India and Ors.,* **[1994] Supp. 5 SCR 1, referred to.**

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 160 of 2002.

(Under Article 32 of the Constitution of India.)

K.N. Raval, Solicitor General, and R.N. Trivedi, Additional Solicitor General, O.P. Sharma, P.S. Mishra, Kapil Sibal, Y.H. Muchhalla, Dr. Rajeev Dhavan, S.S. Ray, Ms. Nanita Sharma, Vivek Sharma, Abhishek Atrey, Aamer Ahmed Madni, R.C. Gubrele, K.R. Gupta, A. Mariarputham, P. Parmeswaran, Rajiv Nanda, Pritish Kapoor, C.D. Singh, Manu Shanker Mishra, S. Chandra Shekhar, Vishnu Sharma, R.K. Singh, Ms. Swarupa Reddy, M.M. Pandey, Ravi Prakash Gupta, Rakesh Kumar Gupta, Sushendra Kumar Chauhan, S.L. Harsh, Kirti Srivastava, Huzefa Ahmdi, Ejaz Maqbool, Nakul Dewan, Aslam Ahmad, Brijesh Kalappa, Akhil Sibal, Shakeel Ahmed, M.A. Siddiqui, T.A. Khan, Mohd. Z.A. Khan, Abdul Munnan, Z. Jilani, Shafi Ahmad Khan, S.A. Kashi, Shakil Ahmed Syed, Mohd. Taiyab Khan, R.C. Verma, Mukesh Verma, Manish Shanker, Anis Suhrawardy, Ms. Sandhya Goswami, Ms. Hemantika Wahi, Tripurari Ray, Vishwajit Singh, Krunesh S. Pawar, Ritesh Agrawal, Ravi Kumar, D.K. Garg and Dharam Vir Singh Rawal, for the appearing parties.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. In the Statement of Objects and Reasons in the Bill ultimately leading to the enactment of the Acquisition of Certain Area

A at Ayodhya Act, 1993 [hereinafter referred to as 'the Act'], it has been stated as follows:

> "There has been a long-standing dispute relating to the erstwhile Ram Janma Bhumi-Babri Masjid structure in Ayodhya which led to communal tension and violence from time to time and ultimately led
B to the destruction of the disputed structure on 6th December, 1992. This was followed by wide-spread communal violence which resulted in large number of deaths, injuries and destruction of property in various parts of the country. The said dispute has thus affected the maintenance of public order and harmony between different
C communities in the country. As it is necessary to maintain communal harmony and the spirit of common brotherhood amongst the people of India, it was considered necessary to acquire the site of the disputed structure and suitable adjacent land for setting up a complex which could be developed in a planned manner wherein a Ram temple, a mosque, amenities for pilgrims, a library, museum and other suitable
D facilities can be set up.
>
> 2. xxxxxxxxx.
>
> 3. xxxxxxxxx."

In the Preamble to the Act also, it has been mentioned as follows:

E

> "An act to provide for the acquisition of certain area at Ayodhya and for matters connected therewith or incidental thereto.
>
> WHEREAS there has been a long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of
F such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, situated in village Kot Ramachandra in Ayodhya, in Pragana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;
>
> AND WHEREAS the said dispute has affected the maintenance of
G public order and harmony between different communities in the country;
>
> AND WHEREAS it is necessary to maintain public order and to promote communal harmony and the spirit of common brotherhood amongst the people of India;

H

AND WHEREAS with a view to achieving the aforesaid objectives, it is necessary to acquire certain areas in Ayodhya; A

xxx xxx xxx."

In *M. Ismail Faruqui etc.* v. *Union of India and Ors.*, [1994] Supp. 5 SCR 1, the validity of the Act was challenged. This Court examined the scheme of the Act and held as under by majority of 3:2 : B

"1(a) Sub-section (3) of Section 4 of the Act abates all pending suits and legal proceedings without providing for an alternative dispute-resolution mechanism for resolution of the dispute between the parties thereto. This is an extinction of the judicial remedy for resolution of the dispute amounting to negation of rule of law. Sub-section (3) of Section 4 of the Act is, therefore, unconstitutional and invalid. C

(b) The remaining provisions of the Act do not suffer from any invalidity on the construction made thereof by us. Sub-section (3) of Section 4 of the Act is several from the remaining Act. Accordingly, the challenge to the constitutional validity of the remaining Act, except for Sub-section (3) of Section 4 is rejected. D

(2) Irrespective of the status of a mosque under the Muslim Law applicable in the Islamic countries, the status of a mosque under the Mahomedan Law applicable in secular India is the same and equal to that of any other place of worship of any religion; and it does not enjoy any greater immunity from acquisition in exercise of the sovereign or prerogative power of the State than that of the places of worship of the other religions. E

(3) The pending suits and other proceedings relating to the disputed area within which the structure [including the premises of the inner and outer courtyards of such structure], commonly known as the Ram Janma Bhumi-Babri Masjid, stood, stand revived for adjudication of the dispute therein, together with the interim orders made, except to the extent the interim orders stand modified by the provisions of Section 7 of the Act. F G

(4) The vesting of the said disputed area in the Central Government by virtue of Section 3 of the Act is limited, as a statutory receiver, with the duty for its management and administration according to Section 7 requiring maintenance of status quo therein under sub-section (2) of Section 7 of the Act. The duty of the Central Government H

A as the statutory receiver is to hand over the disputed area in accordance with Section 6 of the Act, in terms of the adjudication made in the suits for implementation of the final decision therein. This is the purpose for which the disputed area has been so acquired.

(5) The power of the courts in making further interim orders in the B suits is limited to, and circumscribed by, the area outside the ambit of Section 7 of the Act.

(6) The vesting of the adjacent area, other than the disputed area, acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and C administration thereof in accordance with sub-section (1) of Section 7 of the Act, till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The further vesting of the adjacent area, other than the disputed area, in accordance with Section 6 of the Act has to be made at the time and D in the manner indicated, in view of the purpose of its acquisition.

(7) The meaning of the word 'vest' in Section 3 and Section 6 of the Act has to be so understood in the different contexts.

(8) Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, E the title to which is not in dispute being in excess of the disputed area which alone is the subject-matter of the revived suits. It does not apply to the disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely the statutory receiver as indicated, with the duty to restore it to the owner F in terms of the adjudication made in the suits.

(9) The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the professed objective of settling the long-standing dispute cannot be examined at this stage. However, the area found to be superfluous on the exact area needed G for the purpose being determined on adjudication of the dispute, must be restored to the undisputed owners.

(10) Rejection of the challenge by the undisputed owners to acquisition of some religious properties in the vicinity of the disputed area, at this stage is with the liberty granted to them to renew their challenge, H if necessary at a later appropriate stage, in case of continued retention

by the Central Government of their property in excess of the exact area determined to be needed on adjudication of the dispute. A

(11) Consequently, the Special Reference No. 1 of 1993 made by the President of India under Article 143(1) of the Constitution of India is superfluous and unnecessary and does not require to be answered. For this reason, we very respectfully decline to answer it and return the same. B

(12) The questions relating to the constitutional validity of the said Act and maintainability of the Special Reference are decided in these terms."

C

In this proceeding, which is initiated as public interest petition, several reliefs were claimed but after the interested parties were impleaded and their pleadings were put forth what has crystallized is as to the manner in which the adjacent land should be preserved till the final decision in the title suit pending in the High Court of Allahabad. This Court, on 13.3.2002, while issuing the rule, made the following order: D

".....In the meantime, we direct that on the 67.703 acres of land located in revenue plot Nos. 159 & 160 in village Kot Ramchandra which is vested in the Central Government, no religious activity of any kind by anyone either symbolic or actual including bhumipuja or shila puja, shall be permitted or allowed to take place. E

Furthermore, no part of the aforesaid land shall be handed over by the Government to anyone and the same shall be retained by the Government till the disposal of this writ petition nor shall any part of this land be permitted to be occupied or used for any religious purpose or in connection therewith. F

This is subject to further orders which may be passed in this case....."

The aforesaid order was clarified by another order dated 14.3.2002 in the following terms: G

"After hearing the learned Attorney General, as there was some ambiguity in para 3 of our order dated 13th March, 2002, we correct para 3 of our order as follows:

In the meantime, we direct that on the 67.703 acres of acquired land H

A located in various plots detailed in the Schedule to Acquisition of Central Area at Ayodhya Act, 1993, which is vested in the Central Government, no religious activity of any kind by anyone either symbolic or actual including bhumipuja or shila puja, shall be permitted or allowed to take place."

B Subsequently after the pleadings were completed an application was filed seeking for vacating the interim order and for final hearing of the petition. Instead of considering the interim application, we considered we should dispose of the main matter and hence we have finally heard the matter.

C Learned counsel on both sides in the present case heavily relied upon the decision in *M. Ismail Faruqui's* case [supra].

The Act, as it was passed by Parliament, anticipated the settlement of the dispute after obtaining the opinion of this Court and in terms of the said D opinion. However, the reference made to this Court having been returned to the President without any opinion thereto and the provisions of Section 4(3) of the Act by which the pending proceedings stood abated having been declared to be invalid, the suits and the other proceedings along with the interim orders stood revived. Therefore, the whole perception of the provisions of the enactment will have to be made in that light. While it is the contention of the E petitioner that the decision of this Court in *M. Ismail Faruqui's* case [supra] clearly indicates that the purpose of the acquisition of the adjacent land is to meet the easement of necessity of proper enjoyment of the disputed land by its owner who is ultimately to be declared by the High Court of Allahabad and on consideration of the various observations made by this Court in the course of the judgment, particularly that the extent of the area required for F carrying out the purpose of the Act would depend on the decision in favour of the Muslims or Hindus in respect of the disputed land and the scheme to be framed for purposes of developing a complex consisting of museum, library and other structures. All this cannot be done until the suits pending before the High Court of Allahabad are settled. Therefore, they pray that G status quo as ordered by this Court in the interim order should be made absolute and an appropriate relief be granted in the aforesaid terms.

The Union of India and Others submit that the interim relief granted by this Court earlier goes beyond the scope of the decision rendered by this Court in *M. Ismail Faruqui's* case [supra] and the petition filed by the petitioner H should be dismissed straightaway because he had filed a writ petition before

the High Court of Allahabad which came to be dismissed and in this petition there is hardly any proper foundation laid for granting any relief. It is also pleaded that the allegations made in the petition are vague and do not contain the necessary details to appreciate the various contentions urged before the Court and several of the prayers made in the petition have already become infructuous. A B

On several occasions this Court has treated letters, telegrams or post cards or news reports as writ petitions. In such petitions, on the basis of pleadings that emerge in the case after notice to different parties, relief has been given or refused. Therefore, this Court would not approach matters where public interest is involved in a technical or a narrow manner. Particularly, when this Court has entertained this petition, issued notice to different parties, new parties have been impleaded and interim order has also been granted, it would not be appropriate for this Court to dispose of the petition on that ground. C

Filing of the writ petition in the High Court of Allahabad or its dismissal will not come in the way of considering this petition. The scope of that writ petition filed in the High Court is different from what is urged in the present proceedings which is limited to maintaining status quo during pendency of suits before the High Court in respect of acquired land. D

The Preamble to the Act itself discloses that the objective of the enactment is maintenance of harmony between different communities in the country and to maintain public order. If the acquisition has been effected on that basis not only of the disputed land but also of adjacent land, this thread will run through the entire proceedings and we must bear in mind that when the dispute is not yet finally resolved, maintenance of communal harmony and peace is absolutely needed. It is no doubt true that when passions run high, demands are made for several types of activities being carried on in the adjacent land. If any such activities are carried on in such land, even before the resolution of the dispute pending before the court, it may affect the harmony and tranquility that has prevailed for so long. E F G

Section 6(1) of the Act enables the Central Government to transfer its right, title and interest or any of them in the area or any part thereof to any authority or other body, or trusts on such terms and conditions as it may think fit to impose instead of continuing to retain the same itself. Sections 6(2) and (3) provide for certain arrangements of statutory transfer effected by Central Government by declaring that the transferee would step into the H

A shoes of the Government acquiring the same right, title and interest in the area in question. As also that Sections 4, 5, 7, 11, so far as may be, would apply to such transferee as would apply to Central Government.

In the course of the discussion in *M. Ismail Faruqui's* case [supra], it has been observed as follows :

B

"The narration of facts indicates that the acquisition of properties under the Act affects the rights of both the communities and not merely those of the Muslim community. The interest claimed by the Muslims is only over the disputed site where the mosque stood before its demolition. The objection of the Hindus to this claim has to be C adjudicated. The remaining entire property acquired under the Act is such over which no title is claimed by the Muslims. A large part thereof comprises of properties of Hindus of which the title is not even in dispute. The justification given for acquisition of the larger area including the property respecting which title is not disputed is D that the same is necessary to ensure that the final outcome of adjudication should not be rendered meaningless by the existence of properties belonging to Hindus in the vicinity of the disputed structure in case the Muslims are found entitled to the disputed site. This obviously means that in the event of the Muslims succeeding in the adjudication of the dispute requiring the disputed structure to be handed E over to the Muslim community, their success should not be thwarted by denial of proper access to, and enjoyment of rights in, the disputed area by exercise of rights of ownership of Hindu owners of the adjacent properties. Obviously, it is for this reason that the adjacent area has also been acquired to make available to the successful party, that part F of it which is considered necessary, for proper enjoyment of the fruits of success on the final outcome to the adjudication. It is clear that one of the purposes of the acquisition of the adjacent properties is the ensurement of the effective enjoyment of the disputed site by the Muslim community in the event of its success in the litigation; and acquisition of the adjacent area is incidental to the main purpose and G cannot be termed unreasonable. The "Manas Bhawan" and "Sita ki Rasoi", both belonging to the Hindus, are buildings which closely overlook the disputed site and are acquired because they are strategic in location in relation to the disputed area. The necessity of acquiring adjacent temples or religious buildings in view of their proximity to H the disputed structure area, which forms a unique class by itself, is

permissible. (See : *M. Padmanabha Iyengar* v. *Government of A.P.*, AIR 1990 AP 357, and *Akhara Shri Braham Buta* v. *State of Punjab*, AIR (1989) P&H 198. We approve the principle stated in these decisions since it serves a larger purpose.

xxx xxx xxx

However, at a later stage when the exact area acquired which is needed, for achieving the professed purpose of acquisition, can be determined, it would not merely be permissible but also desirable that the superfluous excess area is released from acquisition and reverted to its earlier owner. The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the objective of settling the dispute relating to the disputed area cannot be examined at this stage but, in case the superfluous area is not returned to its owner even after the exact area needed for the purpose is finally determined, it would be open to the owner of any such property to then challenge the superfluous acquisition being unrelated to the purpose of acquisition. Rejection of the challenge on this ground to acquisition at this stage, by the undisputed owners of any such property situate in the vicinity of the disputed area, is with the reservation of this liberty to them. There is no contest to their claim of quashing the acquisition of the adjacent properties by anyone except the Central Government which seeks to justify the acquisition on the basis of necessity. On the construction of the statute made by us, this appears to be the logical, appropriate and just view to take in respect of such adjacent properties in which none other than the undisputed owner claims title and interest.

xxx xxx xxx

Acquisition of the adjacent undisputed area belonging to Hindus has been attacked on the ground that it was unnecessary since ownership of the same is undisputed. Reason for acquisition of the large area adjacent to the disputed area has been indicated. It is, therefore, not unrelated to the resolution of the dispute which is the reason for the entire acquisition. Even though, prima facie, the acquisition of the adjacent area in respect of which there is no dispute of title and which belongs to Hindus may appear to be a slant against the Hindus, yet on closer scrutiny it is not so since it is for the larger national purpose of maintaining and promoting communal harmony

A and in consonance with the creed of secularism. Once it is found that it is permissible to acquire an area in excess of the disputed area alone, adjacent to it, to effectuate the purpose of acquisition of the disputed area and to implement the outcome of the final adjudication between the parties to ensure that in the event of success of the Muslim community in the dispute their success remains meaningful, the extent of adjacent area considered necessary is in the domain of policy and not a matter for judicial scrutiny or a ground for testing the constitutional validity of the enactment. However, it is with the caveat of the Central Government's duty to restore it to its owner, as indicated earlier, if it is found later to be unnecessary; and reservation of liberty to the owner to challenge the needless acquisition when the total need has been determined."

From the observations quoted above, it is clear that the adjacent land, though vest in the Central Government, will have to be utilised in different manners depending upon the outcome of the litigation in respect of the disputed property. Thus the manner or extent to which the adjacent land could be used would depend upon the final outcome of the pending dispute in the High Court. The acquisition of larger extent of land is incidental to main purpose. Thus, the two acquired lands are intrinsically connected with one another and cannot be separated at this stage of the proceedings for different treatment during the interregnum. Further, it has also been made clear that if any land becomes superfluous such land will have to be returned to the owner who may have to initiate appropriate proceedings to challenge the validity of the acquisition as indicated in the course of the judgment of this Court in M. Ismail Faruqui's case [supra]. If land is transferred to any other body or trust as provided under Section 6 of the Act at this stage further complications may arise. Therefore, status quo will have to be maintained until suits are finally disposed of. We hold that the orders of this Court made earlier are not beyond the scope of the decision in *M. Ismail Faruqui's* case.

Above all, status quo has been maintained from 1992 onwards and no activities as are set out in the course of the application have been required to be done so far. When for a long time, a particular state of affairs has prevailed - as in the present case for over a decade - and when the adjudication of the disputes which are pending before the High Court are reaching final stages, it will not be appropriate to disturb that state of affairs. It is well known that preservation of property in its original condition is absolutely necessary to give appropriate reliefs to the parties on the termination of the

proceedings before the courts and, therefore, we do no think that this is one of those cases in which it becomes necessary to disturb that state. A

On consideration of the entire matter, we are of the view that the order made by this Court on 13.3.2002, as modified by the order made on 14.3.2002, should be operative until disposal of the suits in the High Court of Allahabad not only to maintain communal harmony but also to fulfil other objectives of the Act. The writ petition shall stand disposed of accordingly. B

Before parting with the case, we wish to put on record that all the learned counsel and the parties who appeared in person in arguing the matter thoroughly have presented their respective cases only on facts and law arising in the case without bringing into court in any manner the passion raging outside whether religious or political. We greatly appreciate this stand of the Advocates and the parties in the court. C

Petition disposed of.