

(2011) 12 AHC CK 0078
In the Allahabad High Court
Case No : Misc. Bench No. - 11437 of 2011

Mohd. Shabbir Choudhri

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 12 AHC CK 0078

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Judgement

1. Heard Sri Akhter Abbas, learned counsel for the petitioner, learned Standing Counsel and perused the record.

2. With the consent of learned counsel for the parties, we proceed to decide the writ petition finally at the admission stage.

3. This writ petition under Article 226 of the Constitution of India has been preferred by the petitioner for issue of a writ in the nature of mandamus commanding the respondents to permit the petitioner to carry out the religious procession with regard to Tazias, which includes Tazia of big size, namely, "Tazia Pachasa" and combined Tazias of small size.

4. Attention of this Court has been invited towards the agreement entered into between two communities on 24th September, 1959, whereby it was agreed that the Tazia Pachasa shall be carried out only upto Eidgah, whereas the small Tazias shall be carried out upto Karbala. The relevant portion of the agreement dated 24th September, 1959 is reproduced as under:

The Tazias will pass through plot no. 1104, 1055, 1054 and 1039, which are situated in the south of abadi on Saadatganj to the Karbala, one big Tazia will go to the Gandhi ground through the south of plot no. 1104, from west of Set bandh Rameshwar from east of Rishiya mook parwat between the two mango trees and from a place which is 30 yards towards North West of Baradari. This big Tazia will

return back through the same route through which it goes to Eidgah, but there might be some persons with this Tazia who might like to go to Karbala to join the small Tazias from Eidgah leaving behind Big Tazia the route to these person shall be from the western boundary of Ram Lila ground, so only those person who accompany big Tazia to Eidgah shall be allowed to pass through the western boundary of Ram Lila ground and no other person. The Muslim shall not cross the Ram Lila ground. To avoid any misunderstanding about the western boundary I am directing the supervisor Kanungo concerned to demarcate a belt of twelve feet width along with the boundary of Ram Lila ground (to the much west of Lanka). This belt will connect graveyard to the Galiara of Malauli, From connecting point of this belt and Malauli wala Galiara, The Muslim will pass through the Malauli wala galiara in the south of Lanka, the said belt may be used by public in general as Rasta.

5. Learned counsel for the petitioner has further invited attention of this Court towards the judgment and order, passed by the Division Bench of this Court on 9.7.1991, in Writ Petition No. 2335 (M/B) of 1991, Mohammad Shabbir Versus The Home Secretary to Government of U.P., Civil Secretariat, Lucknow and others, whereby the Division Bench of this Court held that the District Administration shall make arrangement to carry out Tazias in terms of the settlement between the parties, subject to law and order. The relevant portion of the order is reproduced as under:-

We are of the view that if the Pachasa Tazia is of the same height as of other Tazias that should be allowed to pass through the pathway in question and the district administration in this regard will make necessary arrangements for maintaining law and order. It is made clear that although religious rights have been guaranteed under the Constitution of India but they are subject to law and order. If the district administration feels that passing through of the Pachasa Tazia through that pathway from where other Tazias pass, would endanger public safety, then it would be appropriate for the authorities to consider and pass suitable orders.

6. During the course of hearing, learned Standing Counsel has invited attention of this Court towards the decision taken by the District Magistrate, Barabanki on 28.11.2011, a copy of which has been filed as Annexure No. CA-2 to the Counter Affidavit and submits that already a decision has been taken, therefore, the present writ petition loses its efficacy.

7. We have gone through the order of District Magistrate, Barabanki. It appears that while deciding the controversy, the District Magistrate has taken note of the agreement entered into

8. Learned counsel for the petitioner has relied upon another judgment and order, passed by the Division Bench of this Court on 9th May, 2011, in Writ Petition No. 3362 (MB) of 2011, Vasudev Gupta Versus State of U.P. through Principal Secretary, Home & others, to make submission that ordinarily the

religious procession should be permitted to continue, even if someone has started de novo.

9. Learned counsel for the petitioner has relied upon two other judgments, reported in 1999 (35) ALR 717, Imambara of Mulnapur Vs State of U.P. and others and 2000 (38) ALR 489, Naushad Ahmad Khan and others Vs. State of U.P. and others.

10. It is for the District Magistrate to decide the controversy after recording the findings, keeping in view the law settled by this Court.

11. Keeping in view the fact that 10th of MOHARRAM is to be held tomorrow i.e. 6.12.2011, it shall be appropriate that the District Magistrate, Barabanki shall reconsider the matter afresh, keeping in view the judgments of this Court as well as the agreement of the year 1959 (supra). Accordingly, the District Magistrate, Barabanki is directed to call a fresh meeting of the representatives of the communities including the petitioner and after providing opportunity of hearing to the parties including the petitioner, he shall take a decision by passing a speaking and reasoned order within 24 hours from the date of receipt of certified copy of the present order and communicate the decision to the petitioner.

12. It has been stated by the learned counsel for the petitioner that from time to time, the Hindus and Muslims of the locality had entered into the compromise and request was made from Hindus' side also to carry out procession of Tazias. This aspect of the matter shall also be considered by the District Magistrate, Barabanki. Liberty is given to the petitioner to make fresh representation along with certified copy of the present order and copy of the present writ petition.

13. Needless to say that we have not entered into the merits of the controversy.

14. With these observations/directions, the writ petition is disposed of finally.

15. Let certified copy of this order be provided to the learned counsel for the petitioner today on payment of usual charges.