
(1999) 03 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 10516 of 1999

Nathu Khan

APPELLANT

Vs

State of U. P.

RESPONDENT

Date of Decision : 27-03-1999

Acts Referred:

Constitution of India, 1950 — Article 25

Citation : (1999) 2 AWC 1361

Hon'ble Judges : M. Katju, J;Bhanwar Singh, J

Bench : Division Bench

Judgement

M. Katju, J.—Heard learned counsel for the petitioner and learned standing counsel. We have also heard Sri R. C. Kandpal. We have perused the writ petition and the short counter-affidavit filed by the Additional City Magistrate. Bareilly.

2. The petitioner has prayed for a mandamus directing the respondents not to interfere in peaceful offering of Namaz in a mosque in village Rukumpur district Bareilly. It is alleged in paragraph 2 of the writ petition that respondent No. 3 Harpal Singh who is incharge of the police station Fatehganj all of a sudden without any complaint stopped the evening prayer. Namaz Magrib, and appointed four constables at the mosque and restrained the Namazees from offering Namaz. In paragraph 4, it is alleged that the mosque was established in the year, 1973 by one Shahzade Khan. It is alleged that the aforesaid property is a waqf property and the mutwalli is at present Natthu Khan. In paragraph 5, It is alleged that earlier the property was owned by Shahzade Khan who is said to have constructed the mosque. In paragraph 7, it is alleged that without any complaint, the respondent No. 3 in an arbitrary manner posted four constables at the spot depriving persons from offering Namaz. In paragraph 10, it is stated that respondent No. 3, Harpal Singh, stopped offering of Namaz on 18.2.1999 and the functioning of the Madarsa attached to the mosque.

3. A short counter-affidavit has been filed by the Additional City Magistrate, Bareilly. It has been admitted in paragraph 8 that there is construction of the

walls on the land in question but without any roof. Learned counsel for the petitioner states that the roof is being repaired. The enclosed area is 20 ft. x 15 ft. and in the front of which towards the east, there is an open land which again is 20 ft. x 17 ft. in dimension. Thereafter there is a road which leads to Marghat and Devasthan towards the south. In paragraph 9 of the counter-affidavit, it is stated that effort is being made to convert it into a mosque because of which communal tension is brewing. In paragraph 11 of the counter-affidavit, it is stated that if the members of the Muslim community are permitted to offer their Namaz on the disputed site taking into account their population, the plot being so small in size, it is bound to over-flow and in the process, the whole road falling to the east of the disputed site is likely to get occupied by Namazees at the time of Namaz, causing stopping of free flow of traffic through the road. In paragraph 12, it is stated that towards south, there is a place of worship for Hindus and as such, the persons of Hindu community have serious objection with regard to the conversion of the disputed site into a mosque.

4. We have carefully perused the affidavit and have considered the arguments of the learned counsel for the parties. India is a free, democratic and secular country. Under Article 25 of the Constitution of India, every person is fully entitled to practise his own religion. Hence the petitioner and other members of Muslim community can freely offer their Namaz or construct mosque on the land in question. The apprehension that there may be communal tension is neither here nor there. Moreover, this cannot be a ground for stopping any person from practising his religion under Article 25 of the Constitution, otherwise the right under Article 25 can be wholly abrogated by simply pleading that if a person or community is allowed to practice his/their religion, there may be communal tension. No such plea can be accepted by this Court. In *Mohd, Sharif Saifi v. State of U. P.* Writ Petition No. 43403 of 1998, decided on 28.1.1999, we have already upheld the right of people under Article 25 to construct a temple/mosque/church. We, therefore, hold that the petitioner and members of Muslim community are fully entitled to offer Namaz on the property in question and the authorities will see to it that no one interferes with this right and law and order is maintained. However, we make it clear that nobody shall be allowed to obstruct the road since, in our opinion, religion must be practised in a peaceful manner without causing any inconvenience or harassment to any one. Hence while we allow the petition and uphold the right of the Muslim community to practice their religion and make a mosque and offer Namaz on the property in question, we make it clear that this right should not be utilised by blocking the nearby roads or obstructing passage of any one. The petitioner is allowed. No order as to costs.