

(1995) 01 AHC CK 0059

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 2 (O) of 1995

Sunni Central Board of Waqfs

APPELLANT

Vs

Gopal Singh Visharad & Ors.

RESPONDENT

Date of Decision : 20-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 1 Rule 8A

Citation : (1995) 01 AHC CK 0059

Hon'ble Judges : A.P.Misra, J;C.A.Rahim, J and I.P.Vasishtha, J

Final Decision : Dismissed

Judgement

A.P.Misra, J.—The present application is by defendant No. 10 for deletion of defendant Nos. 5 to 8 from the array of the defendants in the suit. Learned counsel appearing for defendant No. 10 has pressed this application that the State Government has no concern or control over the property in question now in view of Act No. 33 of 1993 and the judgment of the Supreme Court in Dr. M. Ismail Faruqui and others v. Union of India, reported in 1994 (Vol. VI) SCC p. 360, it is the Central Government, which is now responsible for all the affairs connected with the property in question, hence the said defendants have now become redundant. Further, argument is that on account of the political changes, with the change of Government, change of stand by the said defendants, in addition to, is creating obstacle in the way of proceeding of the suit. For this reason also, they should be deleted from the array of the parties.

2. This prayer has been strongly objected to by the learned counsel appearing for the said defendants, by learned counsel for defendant No. 3 and learned counsel appearing for the plaintiffs in the suit. They have urged that a first information report was lodged with the police as far back in December, 1949, which led to appointment of receiver, the said authorities locked the premises in question. Aggrieved by the actions of the said defendants various suits have been filed, hence it cannot be said that the State is not a necessary party. Further, it is urged, in the suit this Court passed an order dated the 14th of August, 1989, for

maintaining status quo. Thereafter the State, namely, the said defendants made an application on the 6th of November, 1989 for clarification of the order of status quo, which led into passing of the order dated the 7th of November, 1989, hence it cannot be said, State is not a proper party.

3. Argument on behalf of the applicant/defendant No. 10 is that after passing of the Central Act No. 33 of 1993 the premises in question is now under control and management of the Central Government, who is the statutory receiver, and State have nothing to do now, hence, they be deleted.

4. This argument of the learned counsel for the applicant/defendant No. 10 is misconceived. The statutory receiver has to manage and maintain status quo as was on the date the Act No. 33 of 1993 came into existence, but in terms of the Supreme Court decision in the case of Dr. M. Ismail Faruqui and others, (supra), rights of the parties have yet to be determined on the basis of the facts existing preceding the said Act, hence deletion of defendant Nos. 5 to 8 from the array of the parties on accounts of the Central Government having become statutory receiver cannot be accepted. In an application for withdrawal of the proposed written statement or additional written statement by the said defendants in the leading case and other connected cases, the order passed therein, in which the learned counsel, appearing for State has given undertaking, in view of the averments made in various paragraphs of the affidavit, in support of the said application for withdrawal, that it would make available materials, if in the possession of the State, for full and effective disposal of the issues in the case, thus their deletion would be detrimental. On the other hand, their continuance would be in consonance with full and effective adjudication on the issues in this case.

5. Next, counsel for the applicant/defendant No. 10 contends, since no relief has been claimed against the State, hence they be deleted is also devoid of any merit as they continued as defendants in the suit since filing of the suit since long and also looking to the spirit of law as provided by Order I, Rule 8A read with Rule 10(2) of the Code of Civil Procedure the continued presence of the said defendants would be more congenial in the interest of justice and their deletion would not be justified, on the facts and circumstances of the case. One of the objections raised is, which has also merit, in addition, that the present application is also by codefendant No. 10 and not by the plaintiff.

6. For these reasons, we find, She present application is devoid of any merits and is, accordingly, dismissed. Costs on parties.