

Court No. - 9

Case :- CIVIL REVISION No. - 4 of 2025

Revisionist :- Committee Of Management, Jami Masjid Sambhal Ahmed
Marg Kot Sambhal

Opposite Party :- Hari Shankar Jain And 12 Others

Counsel for Revisionist :- Syed Ahmed Faizan, Sr. Advocate, Zaheer
Asghar

Counsel for Opposite Party :- A.S.G.I., C.S.C., Prabhash Pandey

Hon'ble Rohit Ranjan Agarwal, J.

[Civil Misc. Urgent/Interim Application No. NIL of 2025]

1. Heard Sri S.F.A. Naqvi, learned Senior Counsel along with Mohd. Zaheer Asghar and Sri Syed Ahmad Faizan, learned counsel for the applicant, Sri Ajay Kumar Mishra, learned Advocate General for the State assisted by Sri Sanjay Kumar Singh, learned ACSC and Sri Kunal Ravi Singh, learned CSC and Sri Manoj Kumar Singh, learned counsel for the Archeological Survey of India and Sri Hari Shanker Jain, respondent no.1 (in person).

2. This is an application moved on behalf of the Committee of Management, Jami Masjid Sambhal with a request for permitting them for maintenance, cleaning, white washing and lightening work etc. in the Masjid.

3. Sri Naqvi, learned Senior Counsel has submitted that initially an agreement was executed on 13/19.01.1927 registered on 01.03.1927 between the Mutawalis of Jami Masjid Sambhal and the Secretary of the State for India Council. As per the agreement executed in 1927, provision was made in respect of repairs to be carried out in the alleged Masjid by the Archaeological department and the cost of such repairs was to be met out by the endowment that may have been created for the purpose of keeping the said Masjid in repairs or for that purpose, additional funds shall be provided by the Secretary of the State only if the endowment attached to the alleged Masjid proves insufficient for the required repairs.

4. The agreement provided that the Mutawalis were not to undertake any repairs of the alleged Masjid without the prior consent in writing of the Collector, Sambhal (earlier called as "Collector, Moradabad"). The agreement also provided that Mutawali will not destroy, remove, alter, deface or imperil the Masjid, nor they can build on or near the site of the Masjid without the permission of Collector in writing. The relevant agreement executed between the parties is extracted here as under:-

"Copy of Agreement"

This indenture made subject to the provision of the Ancient Movements Preservation Act VII of 1904 the 13th day of January 1927 between the Mutwallies of Jama Masjid Sambhal (hereinafter called the Mutwallies) of the one part and the collector of Moradabad on behalf of the Secretary of State for India in Council (hereinafter called the Secretary of State) of another part. Whereas the Jamma Masjid (hereinafter referred to as the said masjid) has been duly declared to be a protected movement under the provision of section (3) of the said Act by the notification of the government of the United Provisions of Agra and Oudh, Public Works Department, Buildings and Roads Branch No. dated and whereas the terms of this agreement executed under section V of the said Act have been approved by the government of the United Provisions of Agra and Oudh. Witness as follows, namely:-

1. That the said masjid shall be maintained in repair by the Archaeological Department acting on behalf of the Secretary of State, provided that it shall be entirely within the discretion of the Archaeological Department to determine what repairs if any, shall from time to time, be carried out under this condition. The cost of such repairs shall be met out of by endowment that may have been created for the purpose of keeping the said masjid in repair or for that purpose among others, and additional funds provided by the secretary of State only if the endowment funds attached to the said masjid prove in sufficient for the required not repairs.

2. That the mutawallis shall not undertake any repairs to the said masjid without the permission in writing of the Collector of Moradabad.

3. That the mutwallies shall not destroy, remove, alter, deface or imperil the said masjid.

- 4. That the mutwallis shall not build on or near the site of the said masjid without the permission in writing of the Collector, Moradabad.*
- 5. That the secretary of state shall not interface with or hinder in any way the performance of religious observances according to the tenets of Islam at the said Masjid.*
- 6. That visitors will have the free access to the said Masjid but with a due regard to the religious susceptibilities of the mutwallis and the Muslim public.*
- 7. That the mutwallis shall permit the Archaeological officers or such other persons as may be deputed by the collector Moradabad to repair or inspect the said Masjid.*
- 8. That the mutwallis shall be the custodians of the said masjid and shall be responsible for keeping it neat and tidy.*
- 9. That the agreement shall be binding on any person claims to be mutwallis of the said Masjid.*
- 10. That the terms of the agreement may be altered from time to time as the occasion arises with the sanction of the Government of the United Provinces of Agra and Oadh and with the concurrence of the mutawallis.*
- 11. That the collector Moradabad may with the previous sanction of the Government of the United Provinces of Agra and Oudh terminate the agreement on giving six month's notice in writing to the mutwallies.*
- 12. That similarly the mutawllis may terminate the agreement on giving six months notice to the Secretary of State, provided that the Mutawallis will have to pay to the Secretary of State, should the secretary of state so claim all the expenses incurred by the secretary of state in repair in building, maintenance and up keep of the said masjid during the five years previous to the termination of the said agreement or during such part there of as the agreement may have been in force.*
- 13. The commissioner of Rohilkhand Division will be the authority to decide any dispute arising out of the agreement.*
- 14. That the Mutwallis shall give the collector Moradabad six months' previous notice in writing in case the said masjid or any portion there of is offered for sale.*

15. That the Secretary of State reserves to himself the right to purchase at its market value the said masjid or any portion thereof in case it is offered for sale by the mutwallis to other person than the co-sharer. N.B. the condition nos. of 14 & 15 shall not be necessary in the case movements used for religious purposes, as such movements being the public property cannot be offered for sale.

In witness where of the mutwallis have here unto set their hands and the collector of Moradabad has on behalf of the secretary of state, here unto set his hand and the seal of his office.

Sd/md. faigilur Rahman

Sd/A.P. Collector, Esqr. I.C.S.

Collector Moradabad.

19.1.1927

(Registered on 1st March 1927)"

5. Sri Naqvi, has placed before the Court the The Ancient Monuments and Archaeological Sites and Remains Rules, 1959 (hereinafter called as "Rules of 1959") and heavily relied upon Rule 3 which is extracted hereas under:-

"3. Monuments governed by agreement.-*(1) Access to protected monuments in respect of which an agreement has been entered into between the owner and the Central Government under Section 6, or in respect of which an order has been made by that Government under Section 9, shall be governed by the provisions of the agreement or, as the case may be, the order; and nothing in Rules 4, 5, 6 or 7 shall be construed as affecting any such agreement or order.*

(2) A copy of the relevant provisions of every such agreement or order shall be exhibited in a conspicuous part of the monument concerned."

6. According to him, the access to the protected monuments in respect of which, the agreement has been entered into between the parties, owner and the Central Government under Section 6 or in respect of which an order has been made by that Government under Section 9 shall be governed by the provisions of the agreement. He heavily

emphasized on the fact that once the agreement was entered on 13/19.01.1927 between the Mutawalis of Jami Masjid Sambhal and the Secretary of the State for India Council, the agreement shall prevail and is binding between the parties in terms of Rule 3 of Rules of 1959. He then contended that for the last many decades, the white wash and the repairs have been done by the Masjid itself and ASI had not interfered in the matter. He then contended that the holy month of Ramzan is going to commence from 01.03.2025, as such, the application for grant of permission for making the white wash and making necessary repairs and maintenance of the Masjid was sent to the Archaeological Survey of India through post on 08.02.2025. He then contended that without making damage to the Masjid or any alteration being done to the protected site, the white washing and extra lightening work will be carried out by the Masjid Committee.

7. Learned Advocate General of the State had opposed the application on the ground that the Collector, Sambhal was never approached and they were not permitted to enter the Masjid and as per the agreement, it is the Archaeological Survey of India who has to carry out necessary repair and maintenance with the help of the Collector. According to him, once the report of the Archaeological Survey of India is there on record as to whether there is any need for any repair or white washing of the Masjid then only the matter can be dealt with by the Court. He has strongly opposed the application on the ground that it is not maintainable in proceedings under Section 115 CPC. As the Court has limited jurisdiction and the matter is concerning the appointment of Advocate Commissioner by the trial Court in favour the plaintiff. According to him, the terms of the agreement itself clearly provides that it is the Archaeological Survey of India who can undertake the repairs.

8. Sri Manoj Kumar Singh, learned counsel appearing for ASI has submitted that his officers were not permitted by the Masjid Committee to enter as such he is not in a position to make a statement as to whether any

requirement of whitewash is needed or not. He then contends, that if by the order of this Court, the officers are allowed, they can inspect the site and submit the report before Court for consideration of granting permission of whitewashing and extra lightening work in the Masjid during Ramzan period. He next contended that in case any whitewashing is required, then as per the agreement, Archaeological Survey of India shall carry out the same and the expenses incurred shall be borne by the Masjid Committee from its funds.

9. Sri Hari Shanker Jain, respondent no.1 who appears in person has vehemently opposed the application. He contends that in the garb of this application, Masjid Committee would deface the artefact signs and symbols of Hindu temple. He further submits that the application should not be allowed as it is the Archaeological Survey of India who is permitted for maintaining the site and it had given loose control to the revisionist.

10. I have heard respective counsel for the parties and perused the material on record.

11. The short point for consideration before this Court is as to “whether the application filed before this Court seeking permission for the maintenance, whitewashing and extra lightening work of the alleged Masjid during the Ramzan period should be allowed and the Committee of Management of Jami Masjid Sambhal be permitted to carry out the work”.

12. It is not in dispute that the site is protected and is under the control and supervision of the Archaeological Survey of India. An agreement was executed on 13/19.01.1927 between the Mutawalis of Jami Masjid Sambhal and the Secretary of the State for India Council. The agreement is binding between the parties in terms of Rule 3 of Rules, 1959. It lays down the condition under which the Mutawalis of the Masjid and the Archaeological Survey of India will function in protecting the ancient monuments.

13. As far as the repairs are concerned, the terms of agreement clearly provides that it is the discretion of the Archaeological department to determine what repairs, if any, shall from time to time, be carried out under this condition. It has not been disputed by the counsel for the revisionist that it is the responsibility of the Archaeological Survey of India to maintain the site as per the agreement arrived between the parties in the year 1927.

14. However, looking to the urgency in the matter as the holy month of Ramzan is going to commence from 01.03.2025, the application needs to be adjudicated by this Court, though, this Court *prima facie* finds that it is only dealing with matter relating to appointment of Advocate Commissioner by the Court below. But, as further proceedings of the suit has been stayed, cause arises for consideration of the application moved by the revisionist in revisional proceedings.

15. As the terms of the agreement is crystal clear, and clearly provides for repairs to be undertaken by the Archaeological Survey of India, and whatever the cost is incurred, the same shall be borne by the endowment that have been created for purpose of keeping the said Masjid clean and, if the funds proves to be insufficient, it shall be provided by the Secretary of the State. Further, the agreement cautions the Mutawalis not to destroy, alter, deface or imperil the alleged Masjid. In the garb of the maintenance, repairs or whitewash, no such exercise shall be carried out by any person who is in-charge of Masjid so as to alter, deface or imperil the site.

16. The apprehension raised by Sri Hari Shanker Jain, respondent no.1 needs to be addressed by this Court, as he submits that in the garb of whitewash, purpose of the suit may not be jeopardised. To balance the equity between the parties, it is necessary that during the holy month of Ramzan, the revisionist and members belonging to his community may perform their religious activity without any hindrance.

17. In view of the said fact, Archaeological Survey of India is hereby directed to immediately inspect the site by appointing team of three officers comprising Sri Madan Singh Chauhan, Joint Director General, Sri Zulfequar Ali, Director (Monument) and Sri Vinod Singh Rawat, Superintending Archaeologist, ASI, Meerut Circle along with Mutawalis of the Masjid during course of the day. Archaeological Survey of India shall submit its report tomorrow by 10 a.m.

18. The report shall state as to the requirement of whitewashing and maintenance/repair, if any needed, inside the premises. A videography shall also be done by the ASI for the work to be undertaken before Ramzan starts.

19. Put up this case as fresh **tomorrow i.e. 28.02.2025 at 10:00 a.m.**

20. When the matter is taken up tomorrow at 10:00 a.m., the Court shall consider for directing the parties for undertaking the aforesaid exercise before the holy month of Ramzan starts.

Order Date :- 27.2.2025

SK Goswami