

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. OF 2020

IN

WRIT PETITION (CIVIL) NO. 559 OF 2020

IN THE MATTER OF:-

VISHWA BHADRA PUJARI PUROHIT
MAHASANGH & ORS.

... PETITIONERS

-VERSUS-

UNION OF INDIA

... RESPONDENT

AND

IN THE MATTER OF:-

1. JAMIAT ULAMA-I-HIND

... APPLICANT NO.1

2.

... APPLICANT NO.2

APPLICATION FOR IMPLEADMENT

To,

Hon'ble the Chief Justice of India
and his companion judges of the
Supreme Court of India.

The humble Application of the
above named Applicants

MOST RESPECTFULLY SHOWETH:-

1. That the abovementioned Writ Petition has been filed by the Petitioners herein under Article 32 of the Constitution of India challenging the constitutional validity of Section 4 of The Places of Worship (Special Provisions) Act, 1991 (Parliament Act no. 42 of 1991) (herein after to refer to as the 'Impugned Act') . The present petition states that Section 4 of the Impugned Act validates the *alleged* illegal and barbarous action of invaders who had converted the Hindu places of worship by restricting the right of Hindus to reclaim possession of these places of worship which had been converted by the invaders. It has further been alleged that Section 4 of the Impugned Act *inter alia* discriminates the members of the Hindu Community *vis a vis* the members of the Muslim Community in the matter of restoring possession of places of worship.

2. At the outset this application is being filed to oppose the present Writ Petition, so that this Hon'ble Court is pleased to not issue notice in the present petition. It is submitted that even issuance of notice in the present matter will create fear in the minds of the Muslim Community with regard to their places of worship, especially in the aftermath of the Ayodhya Dispute and will destroy the secular fabric of the nation.

3. The Applicant organization was established in November 1919 and the main aims and objectives of the Applicant organization are inter alia as follows:

- a) Protection of Islam, Islamic Culture, tradition, Islamic heritage and places of worship.
- b) Protection and promotion of religious, cultural, educational and citizenship rights of the Muslim Community.
- c) Reformation of religious, social and educational life of the Muslim community.
- d) Establishment of such institutions, which could empower Muslims educationally, culturally, socially, economically.
- e) In accordance with the teachings of Islam promotion of cordial and friendly relations among members of different Indian Communities.
- f) Any male or female Muslim is eligible to become a member of the Applicant organization if he/she is of sound mind and fully agrees with the aims and objects of the Applicant Organization.

4. The Applicant Organization is regularly involved in several philanthropic activities, some of the recent instances of the work

done by the Applicant Organization includes extending relief to Nepal Earthquake victims, extending relief for victims of fire in Pune, building of colonies for the homeless in Assam, extending relief to victims of flood in Kashmir and undertaking other relief work such as providing ambulances in the flood affected areas, rehabilitating the flood victims by building homes for them. Further the Applicant organization has also built homes in Malegaon for the victims who lost their houses due to fire, built homes in Bihar for the victims who lost their houses due to flood, has extended relief to the Rohingya refugees and has set up medical camps in tribal areas including the district of Palghar in Maharashtra. Apart from such services, the Applicant organization has worked in several other areas affected by riot and natural calamities and has been spending huge amount of money for provision of Education, Medical and Legal Aid.

5. Further more recently, the Applicant organization has also undertaken relief work such as construction of homes and other flood relief work in Kolahpur, Sholapur, Sangli, Mirja flood relief. Pertinently, the Applicant Organization has also been undertaking relief work during the present Corona Pandemic.

6. Apart from the above, the Applicant organization, had been a party in the proceedings arising out of the Ayodhya Dispute. It is

relevant to mention that Suit No. 4 of 1989 (originally Regular Suit No. 12 of 1961), which was preferred by the Sunni Central Board of Waqfs, U.P along with 9 Muslim residents of Ayodhya, included the office bearer of the Applicant Organization- Molvi Mohammad Qasim, who was the General Secretary of the Uttar Pradesh branch of the Applicant Organization and was Plaintiff No. 2 in the said suit. Subsequently, after the demise of Mohd. Molvi Mohammad Qasim, M. Siddiq took the place of the General Secretary of the Uttar Pradesh branch of the Applicant Organization and was substituted in the Suit No. 4 of 1989 as Plaintiff No. 2/1. Even in the Civil Appeals decided by the Hon'ble Supreme Court by judgment dated November 9, 2019, the lead petition was Civil Appeal Nos. 10866-67 of 2020 which was preferred by M. Siddiq. After the demise of M. Siddiq, Maulana Syed Ashhad Rashidi, President, Jamiat Ulama-i-Hind, Uttar Pradesh) was substituted in his place. The Applicant organization further sought review of the Judgment dated November 9, 2019 passed by this Hon'ble Court in Civil Appeal Nos. 10866-67 of 2020 by filing Review Petition (Civil) No. 2689 of 2019 which was ultimately rejected by this Hon'ble Court on December 12, 2019. The Applicant Organization submits that since after the rejection of the Review Petition, the Judgment dated November 9, 2019 passed by this Hon'ble Court has become final and the law of the land, the

Applicant Organization is bound by it and respects the said judgment.

7. The Applicant organization is not a registered organization.

8. Since the present Petition proceeds on the basis that the impugned provision, i.e., Section 4 of the Places of Worship Act, prevents members of the Hindu Community from reclaiming those places of worship, which according to the Petitioners were Hindu places of worship but were allegedly, converted by Muslim invaders, it is apparent that the present petition seeks to indirectly target places of worship which are presently of Muslim character. In such circumstances, this Hon'ble Court maybe pleased to implead the Applicant Organization in the present petition as the Applicant Organization wishes to put forth the views of the Muslim Community.

9. That as mentioned above, the Applicant Organization wishes to oppose the challenge to Section 4 of the Places of Worship (Special Provisions) Act, 1991 and wishes to submit the following points for the consideration of this Hon'ble Court:-

(i) That the Places of Worship (Special Provisions) Act, 1991 was enacted to fulfil two purposes. First, it prohibits the conversion of any place of worship. In doing so, it speaks to

the future by mandating that the character of a place of public worship shall not be altered. Second, the law seeks to impose a positive obligation to maintain the religious character of every place of worship as it existed on 15 August 1947 when India achieved independence from colonial rule. These purposes have been recognized by this Hon'ble Court in its recent judgment of *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das*, (2020) 1 SCC 1 at para 92 (pg. 247).

- (ii) That Section 4 of the Act preserves the religious character of a place of worship as its existed on 15.08.1947.
- (iii) As noted by this Hon'ble Court in *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das*, (2020) 1 SCC 1 at para 99 (pg.250), the purpose of enacting the law was explained by the Union Minister of Home Affairs on the floor of the Lok Sabha on 10-9-1991 [Lok Sabha Debates, Vol. V, Nos. 41-49, p. 448.] :

“We see this Bill as a measure to provide and develop our glorious traditions of love, peace and harmony. These traditions are part of a cultural heritage of which every Indian is justifiably proud. Tolerance for all faiths has characterised our great civilisation since time immemorial.

These traditions of amity, harmony and mutual respect came under severe strain during the pre-Independence period when the colonial power sought to actively create and encourage communal divide in the country. After Independence we have set about healing the wounds of the past and endeavoured to restore our traditions of communal amity and goodwill to their past glory. By and large we have succeeded, although there have been, it must be admitted, some unfortunate setbacks. Rather than being discouraged by such setbacks, it is our duty and commitment to take lesson from them for the future.”

- (iv) Again this Hon’ble Court in *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das*, (2020) 1 SCC 1 at para 100 (pg. 250) has noted that the then Union Minister of Home Affairs had indicated that the law which sought to prohibit the forcible conversion of places of worship was not “*to create new disputes and to rake up old controversies which had long been forgotten by the people ... but facilitate the object sought to be achieved*” [Lok Sabha Debates, Vol. V, Nos. 41-49, p. 448.] . Speaking in support of the cut-off date of 15-8-1947,

one of the Members (Shrimati Malini Bhattacharya) explained

[Lok Sabha Debates, Vol. V, Nos. 41-49, pp. 443-444.] :

“But I think this 15-8-1947 is crucial because on that date we are supposed to have emerged as a modern, democratic and sovereign State thrusting back such barbarity into the past once and for all. From that date, we also distinguished ourselves ... as State which has no official religion and which gives equal rights to all the different religious denominations. So, whatever may have happened before that, we all expected that from that date there should be no such retrogression into the past.”

- (v) After the above discussion, this Hon’ble Court itself noted that the Places of Worship (Special Provisions) Act, 1991 protects and secures the fundamental values of the Constitution. The relevant observations of this Hon’ble Court in this regard are at para 101 (pg. 250) of the *M. Siddiq judgment*, which is as follows:-

“101. The Places of Worship Act which was enacted in 1991 by Parliament protects and secures the fundamental values of the Constitution. The Preamble underlines the need to protect the liberty of thought,

expression, belief, faith and worship. It emphasises human dignity and fraternity. Tolerance, respect for and acceptance of the equality of all religious faiths is a fundamental precept of fraternity. This was specifically adverted to by the Union Minister of Home Affairs in the course of his address before the Rajya Sabha [Rajya Sabha Debates, Vol. CLX, Nos. 13-18, pp. 519-520 and 522.] on 12-9-1991 by stating:

“I believe that India is known for its civilisation and the greatest contribution of India to the world civilisation is the kind of tolerance, understanding, the kind of assimilative spirit and the cosmopolitan outlook that it shows....

The Advaita philosophy ... clearly says that there is no difference between God and ourselves. We have to realise that God is not in the mosque or in the temple only, but God is in the heart of a person....

Let everybody understand that he owes his allegiance to the Constitution, allegiance to the unity of the country: the rest of the things are immaterial.”

- (vi) Ultimately this Hon'ble Court concluded that the Places of Worship (Special Provisions) Act, 1991 imposes a non-derogable obligation towards enforcing our commitment to secularism under the Indian Constitution. It was further observed that it was a legislative instrument designed to protect the secular features of the Indian polity, which is one of the basic features of the Constitution. The relevant observations of this Hon'ble Court are contained in Para 102 (pg. 251) of the M. Siddiq Judgment, which is as follows:-

“102. In providing a guarantee for the preservation of the religious character of places of public worship as they existed on 15-8-1947 and against the conversion of places of public worship, Parliament determined that independence from Colonial Rule furnishes a constitutional basis for healing the injustices of the past by providing the confidence to every religious community that their places of worship will be preserved and that their character will not be altered. The law addresses itself to the State as much as to every citizen of the nation. Its norms bind those who govern the affairs of the nation at every level. Those norms implement the Fundamental Duties under Article 51-A and are hence positive mandates to every citizen as

well. The State, has by enacting the law, enforced a constitutional commitment and operationalised its constitutional obligations to uphold the equality of all religions and secularism which is a part of the basic features of the Constitution. The Places of Worship Act imposes a non-derogable obligation towards enforcing our commitment to secularism under the Indian Constitution. The law is hence a legislative instrument designed to protect the secular features of the Indian polity, which is one of the basic features of the Constitution. Non-retrogression is a foundational feature of the fundamental constitutional principles of which secularism is a core component. The Places of Worship Act is thus a legislative intervention which preserves non-retrogression as an essential feature of our secular values.”

- (vii) The Places of Worship Act is intrinsically related to the obligations of a secular State. It reflects the commitment of India to the equality of all religions. Above all, the Places of Worship Act is an affirmation of the solemn duty which was cast upon the State to preserve and protect the equality of all faiths as an essential constitutional value, a norm which has the status of being a basic feature of the Constitution. There is

a purpose underlying the enactment of the Places of Worship Act. The law speaks to our history and to the future of the nation. Cognizant as we are of our history and of the need for the nation to confront it, Independence was a watershed moment to heal the wounds of the past. Historical wrongs cannot be remedied by the people taking the law in their own hands. In preserving the character of places of public worship, Parliament has mandated in no uncertain terms that history and its wrongs shall not be used as instruments to oppress the present and the future. [Please see para 103 at pg. 251 of the *M. Siddiq Judgment*]

(viii) In view of the foregoing, it is clear that this Hon'ble Court after conducting a detailed analysis of the Places of Worship (Special Provisions) Act, 1991, *inter alia* noted as follows:-

- a) The Act protects and secures the fundamental values of the constitution.
- b) Section 4 by prohibiting conversion of the places of public worship, determined that independence from Colonial rule furnished a constitutional basis for healing the injustices of the past by providing the confidence to every religious community that their

places of worship will be preserved and their character will not be altered.

- c) By enacting the Places of Worship (Special Provisions) Act, 1991, the state has enforced a constitutional commitment and operationalized its constitutional obligations to uphold the equality of all religions and secularism which is a part of the basic features of the constitution.
- d) The Act imposes a non-derogable obligation towards enforcing the nation's commitment to secularism under the Indian constitution.
- e) The Act is designed to protect secular features of the Indian polity, which is one of the basic features of the Constitution.

Yet, despite these observations, the Petitioners herein have challenged Section 4 of the Places of Worship (Special Provisions) Act, 1991 on the very grounds of secularism.

- (ix) Without prejudice to the foregoing, even if all the allegations of the Petitioners are assumed to be true, it is nothing but seeking a correction of historical wrongs, which as held by this Hon'ble Court in M. Siddiq's case is not something which

can be done. In *M. Siddiq's* case at para 978 (page 642) this Hon'ble Court has categorically held that the law cannot be used as a device to reach back in time and provide a legal remedy to every person who disagrees with the course which history has taken and that the courts of today cannot take cognizance of historical rights and wrongs unless it is shown that their legal consequences are enforceable in the present. In fact, this Hon'ble Court categorically held that this Court cannot entertain claims that from actions of the Mughal rulers against Hindu Places of Worship in a court of law today. In this respect, the observations of this Hon'ble Court in Para 997 (page 651) of *M. Siddiq's* case are important:

“997. This Court cannot entertain claims that stem from the actions of the Mughal rulers against Hindu places of worship in a court of law today. For any person who seeks solace or recourse against the actions of any number of ancient rulers, the law is not the answer. Our history is replete with actions that have been judged to be morally incorrect and even today are liable to trigger vociferous ideological debate. However, the adoption of the Constitution marks a watershed moment where We, the People of India,

departed from the determination of rights and liabilities on the basis of our ideology, our religion, the colour of our skin, or the century when our ancestors arrived at these lands, and submitted to the rule of law. Under our rule of law, this Court can adjudicate upon private property claims that were expressly or impliedly recognised by the British Sovereign and subsequently not interfered with upon Indian Independence.”

In view of the foregoing, it is clear that the present Petition which rests on the basis that Muslim Invaders allegedly converted the Hindu Places of Worship, cannot be entertained in view of the law laid down by the 5 Judges constitution bench of this Hon’ble Court in *M. Siddiq’s judgment*.

- (x) That the present Petition raises grounds which have already been considered and decided by the constitution bench of this Hon’ble Court in *M.Siddiq’s judgment* and in a way the present petition is seeking a review of all the propositions of law which have already been considered and decided by this Hon’ble Court. Needless to say, a review of the *M. Siddiq* judgment is not possible by way of filing the present petition.

- (xi) That there is no conflict between the Wakf Act and the Places of Worship (Special Provisions) Act, 1991 as alleged by the Petitioners as Section 7 of the 1991 Act gives it an overriding effect over other enactments. Further, in any event, the Places of Worship (Special Provisions) Act, 1991 being a special vehicle act to preserve the secular fabric of the country will in any event take precedence over a general enactment.
- (xii) Lastly, as was pointed out during the hearing of the *M. Siddiq* case before this Hon'ble Court that there is a list of numerous mosques which is doing the rounds on social media, alleging that the said mosques were built allegedly by destroying Hindu places of worship, needless to say that if the present petition is entertained, it will open floodgates of litigation against countless mosques in the country and the religious divide from which the country is recovering in the aftermath of the Ayodhya dispute will only be widened.

10. That in view of the abovementioned averments, the Applicant Organization whose objects is *inter alia* to protect Muslim Places of ought to be permitted to implead itself in the present matter.

11. The Applicants/Petitioners state that the present Application is being filed *bona fide* and in the interests of justice.

12. The Applicant has not filed any other or similar application on similar issue before this Hon'ble Court or before any other Court in the country.

PRAYER

It, is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- (i) allow the Applicant to be impleaded as party Respondent in Writ Petition (Civil) No. 559 of 2020; and/or
- (ii) filing of duly affirmed affidavit be exempted in the prevailing circumstances; and/or
- (iii) pass such other or further order or orders or such directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and to meet the ends of justice.

AND FOR THIS ACT OF KINDNESS THE APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:-

EJAZ MAQBOOL
Advocate for the Applicants

DRAWN BY: -

Mr. Ejaz Maqbool, Advocate
Mr. Shahid Nadeem, Advocate
Ms. Akriti Chaubey, Advocate

New Delhi
Filed on: 13.06.2020