2026:AHC:130818-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 16649 of 2026

Syed Rashid Ali and others …..Petitioner(s)

Versus

State of U.P. and others …..Respondent(s)

Counsel for Petitioner(s)	:	Mr. Quazi Mohammad Akaram
Counsel for Respondent(s)	:	Mr. Mahesh Chandra Chaturvedi, Additional Advocate General along with Mr. Suresh Singh, Additional Chief Standing Counsel for State Mr. Vineet Sankalp, Advocate for Nagar Nigam, Varanasi Mr. Ravi Prakash Pandey, Advocate for Varanasi Development Authority, Varanasi

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RESERVED

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE ARUN KUMAR, J.

(DELIVERED BY : J.J. MUNIR, J.)

This writ petition has been instituted by six petitioners, who are tenants and shopkeepers of six shops situate in Dalmandi Market/Street, Varanasi. They pray that this Court do issue multiple directions in the

nature of *mandamus* against the respondents, that they say are essential to protect their rights of myriad kind, as would be presently seen.

2. The foremost command the petitioners wish this Court to issue is one directing the respondents not to dispossess them from their respective shops and buildings, situate at Dalmandi Market/Street arbitrarily and illegally, and in violation of their legal as well as human rights.

3. The second and the third reliefs, which the petitioners seek, are in aid of the first, and both of those reliefs are directed to prevent the respondents from deploying workmen, the Police and the paramilitary forces to effect their dispossession, as aforesaid, or harass or threaten them in order to forcefully dispossess them from their respective premises.

4. The fourth relief is a distinct and different relief, by which, the petitioners seek a direction to the respondents to take over and change the character of the six ancient mosques existing at Dalmandi Street, prior to the 15th day of August, 1947, to wit, Anjuman Intezamia Masjid, Masjid Rangile Shah, Masjid Ali Raza Khan, Masjid Karimullah Baig, Masjid Nisaran and Masjid Sangamarmar.

5. The last of the reliefs, which the petitioners seek, is a *mandamus* directing the respondents to develop any other alternative street nearer the Kashi Vishwanath Dham Corridor in order to widen and strengthen the

same for the sake of easy movement and commutation of pilgrims, devotees and tourists visiting the *Dham*.

6. In substance, therefore, what the petitioners seek is, in the first part, protection of their possession in their respective shops located at Dalmandi Market/Street, where they do business, and, in the second, preservation of the six old mosques, that are likely to give way to the project for widening and beautification of street as part of development of the Kashi Vishwanath Corridor.

7. The facts of this case are that the petitioners are tenants and shopkeepers of shops, which bear the following number :

1. CK43/168-169;
2. CK68/1;
3. CK69/32;
4. CK43/147;
5. CK68/36; and
6. CK43/181

All the aforesaid shops are situate at Dalmandi Market/Street, Varanasi. The petitioners say that they have been engaged in their respective business in these shops for decades. Prior to the petitioners taking up business in these shops, their ancestors were engaged in running the same business in the very shops and premises that the petitioners now occupy. In short, they say that not only their business, but also their

business premises are now legacy in their hands. They have brought on record lease agreements, rent slips and electricity bills relating to their respective shops in order to substantiate their claim, all annexed to the writ petition as Annexure No. 1.

8. The petitioners further say that they have been doing active and continuous business in the respective shops at Dalmandi Market/Street for decades, as they say, and in proof thereof, they have produced some still photographs of the shops, which they have annexed to the writ petition. According to the petitioners' case, the Dalmandi Market is a busy and dense area, which has existed for centuries. People from all over the Purvanchal visit this market for shopping and purchase of necessaries and other things of use. It is a market that serves not only Varanasi, but also the entire Purvanchal. The Dalmandi Market is located in a stretch of 650 meters, which houses 187 buildings. These buildings have existed, as already said, for a long period of time. The buildings house more than 1000 shops. Dalmandi is a densely populated area, which is dominated by members of a particular religious community, to wit, the Muslims. More than 97% of the shopkeepers and owners of the buildings are Muslims and they have been carrying on their profession and business for decades together. No one has interfered in the peaceful business and occupation of the petitioners and other occupants until the month of July 2025.

9. The petitioners say that they were utterly surprised, as also the other shopkeepers and residents of Dalmandi, when a Government Order dated 31.03.2025, followed by another dated 30.7.2025, were issued by the State Government, allocating a budget of ₹21,588.24 lakhs for the purpose of widening and beautification of the Dalmandi Street. It is pointed out that the Dalmandi Street has a maximum width of 70 feet for the present. The respondents propose to widen and strengthen the Dalmandi Street for easy movement and commutation of tourists, pilgrims, and devotees, who visit the Kashi Vishwanath Dham.

10. The distance of the Dalmandi Market from the Kashi Vishwanath Mandir is about 800 meters towards the east. Adjacent to the Dalmandi is Kodai Chowk and Sonar Gali, which are located at a distance of 100 meters from the Kashi Vishwanath Temple. However, the distance of Dalmandi through Chowk is about 800 meters. The petitioners, therefore, say that Dalmandi is much farther than Sonar Gali from the Kashi Vishwanath Dham Corridor and the Kashi Vishwanath Temple. The petitioners further plead that the Public Works Department[1] seek to take possession of the entire Dalmandi area for the purpose of its beautification, widening and strengthening. The purpose and idea behind the widening and beautification of Dalmandi Street is said by the respondents to be ease of movement in commutation of pilgrims, who come to visit the Kashi Vishwanath Temple, Varanasi.

1 'PWD' for short

11. After the Government Orders dated 31.03.2025 and 30.07.2025, have been issued, the respondent-Authorities, their workmen and the Police have been threatening the petitioners and harassing the other shopkeepers and residents of the entire Dalmandi Market/Street for the purpose of forcibly dispossessing them from the buildings in which their shops are located, without resort to any provision of the law, in clear violation of their rights.

12. The next fact that is pleaded is about a different right altogether. It has nothing to do with the petitioners' right to freedom of trade, business or livelihood, or its abridgment in consequence of the State's decision to widen the Dalmandi Street. It is about the right of the petitioners to practice their religion, and more than that, protect old mosques, said to be constructed prior to the 15th day of August, 1947 from losing their existence to the proposed development. It is pleaded that in the Dalmandi area, where old members of the Muslim community are working for the occupation or living, there are six ancient mosques called Anjuman Intezamia Masjid, Masjid Rangile Shah, Masjid Ali Raza Khan, Masjid Karimullah Baig, Masjid Nisaran and Masjid Sangamarmar. All these mosques have been constructed decades ago and decidedly, before the 15th day of August 1947. The petitioners have secured documents regarding ownership and existence of some of the mosques and also photographed them. Copies of the documents relating to these mosques and the original

photographs thereof from the Dalmandi Market/Street are annexed to the writ petition as the Fifth Annexure. It is pleaded in paragraph no. 15 that the said mosques are also proposed to be demolished by the respondents, in the garb of enforcing Government Orders dated 31.03.2025 and 30.07.2025 for the purpose of widening and beautification of the Dalmandi Street/Market.

13. The petitioners somehow secured, under the Right to Information Act, 2005[2] from the PWD, Varanasi information to show that the six ancient mosques are also proposed to be taken over and demolished. The PWD sent their reply that all the six mosques in question are said to be acquired and taken over by the respondents. A copy of the reply from the PWD, Varanasi under the RTI is also on record to the writ petition and annexed to it. It is emphasised that there is no urgency and necessity for public purpose that may move the respondents to widen the Dalmandi Street. It is emphasised that no notification mentioning the purpose of widening of the Dalmandi Street has so far been published by the Government. It is averred that no public purpose, which the respondents say is involved, would be served by depriving thousands of citizens of their right to livelihood and shelter as also their right to worship by demolishing the six ancient mosques located in the area. The proposed decision of the respondents to widen the Dalmandi Street is, therefore,

2 'RTI' for short

perverse, arbitrary and illegal, and above all, one, in violation of The Places of Worship (Special Provisions) Act, 1991[3].

14. It is next pleaded that without issue of a preliminary notification under Section 11 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013[4], the respondents, in collusion with each other, have commenced demolishing shops and buildings forcibly and without due process of law, all located in the Dalmandi Market/Street, in the name of the aforesaid Government Orders dated 31.03.2025 and 30.07.2025.

15. It is specifically pleaded that for their protection, in matter of acting *dehors* the law, the other respondents and officers of the Nagar Nigam have manufactured a representation given by one Sanjay Singh, who has written to the Nagar Nigam, that some buildings in the Dalmandi Market are in a dilapidated condition and need to be demolished by the Nagar Nigam. In the garb of acting on the said representation dated 29.01.2026, the respondents, with the aid of the Police and the paramilitary forces, encircled the entire Dalmandi area and demolished 29 buildings from 09.02.2026 until date. A copy of the representation dated 29.01.2026 addressed to the Nagar Ayukt, Nagar Nigam, Varanasi by Dr. Sanjay Singh Gautam is on record of the writ petition as an annexure. The Nagar Nigam have a list of buildings that are dilapidated in the entire city of

3 'Act of 1991' for short
4 'Act of 2013' for short

Varanasi. However, no buildings have so far been demolished, except those located in the Dalmandi Street/Market. A copy of the dilapidated buildings drawn up by the Nagar Nigam, Varanasi is also annexed to the writ petition.

16. The petitioners and other similarly situate persons affected by the illegal demolition of the buildings, where their premises are located, have captured some still photographs of the demolition carried out by the respondents and their workmen, officers and police personnel. Copies of the photographs of demolition are placed on the record of the writ petition. The petitioners have received threats from the respondents, asking them to vacate their respective shops and premises, without due process of law. The respondents threatened human rights of the petitioners as well as have threatened to forcibly dispossess the petitioners from their respective shops and premises, without providing them resettlement, relocation and rehabilitation, which are their legal rights, provided under the Act of 2013. The petitioners are being deprived of the right to livelihood and shelter, pushing them to the verge of starvation.

17. There are other odd pleadings in paragraphs nos. 25 and 26 of the writ petition, which show that the purpose behind the demolition of the residential shops and buildings and the proposed widening is extraneous and directed to target a particular community at the instance of the ruling dispensation in the State. Again, extraneous motives are imputed to the

Government and the respondent-Authorities in paragraph no. 27 of the writ petition. It is next said that apart from this, thousands of citizens, including the petitioners, are said to be deprived of their livelihood, whereas only about 30 residential buildings are situate in the Sonar Gali, a far more suitable and easier site for widening and strengthening of the pilgrims' route during their commutation and movement, while visiting the Kashi Vishwanath Dham.

18. A Social Impact Study Report prepared by an agency called ENV DAS India (Pvt.) Ltd. Developmental Assistance India Private Limited, Lucknow, that was forwarded to the Land Acquisition Officer, shows that the shopkeepers in the Dalmandi Street are tenants belonging to the Muslim community. They would be deprived of their livelihood, in the event they are dispossessed by widening of the Dalmandi Market/Street, one of the oldest markets. The said report also says that every now and then, demolition drive is carried out by the respondents, curtailing legal and human rights of the shopkeepers and residents in the area. This is emphasised that there are heaps of debris, scattered over the entire Dalmandi area, that have made business difficult for shopkeepers. The business of the petitioners and other men of commerce at the Dalmandi have been ruined by the threats extended by the respondents, the Police and the paramilitary forces who are deployed in the area and patrolling it.

19. It is particularly urged that the Parliament has passed the Act of 1991 with the object and purpose of prohibiting conversion of any place of worship and to provide for maintenance of the religious character of any place of worship, as it existed on 15.08.1947, and for matters connected therewith or incidental thereto. The character that is to be preserved is one that existed on the 15th day of August 1947. Various provisions of the Act of 1991 have been copiously pleaded in order to bring home the point as to how the said Act would be violated, if the six mosques, located in the Dalmandi, are included in the development scheme.

20. It is pleaded that by virtue of Section 4 of the Act of 1991, no acquisition, as proposed by the respondents, could be made. Therefore, any notification or Government Order, making a proposal for the acquisition of the mosques in Dalmandi is *per se* illegal and arbitrary, besides being one in violation of legal and human rights of the petitioners, apart from other members of the Muslim community. It is emphasised that according to the Social Impact Study Report, 50% of the families reside in Dalmandi and 45% of them live at other places, but have their business there. The Social Impact Study Report also mentions the six ancient mosques present in the Dalmandi. The petitioners allege violation of their fundamental rigths under Articles 14, 21, 19(1)(a) and 300(a) of the

Constitution. It is broadly on these pleadings that the petitioners seek relief in the present petition.

21. In the supplementary affidavit filed by the petitioners, there is appended a letter from the U.P. Sunni Central Waqf Board, Lucknow[5] dated 23.04.2026 from the Chief Executive Officer of the Board with the Executive Engineer, Provincial Division, PWD, Varanasi. It is a response to the letter dated 17.04.2026 from the Executive Engineer to the Chief Executive Officer of the Waqf Board, where properties of certain Waqf were intimated to be wholly or entirely affected by some project, with particulars of the premises number furnished to the Waqf Board. In the reply of the Chief Executive Officer of the Waqf Board, six mosques are mentioned with their premises number and the relative Waqf number. The names of respective Mutawalli of the six Waqf are also mentioned. It is said, at the tail end of the letter, that proceedings for acquisition of any Waqf property have to be taken in accordance with Sections 51 and 91 of The Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995[6].

22. It is the petitioner's case, in paragraph no. 3 of the supplementary affidavit, that the Waqf Board could not issue guidelines/instructions to the Executive Engineer, Provincial Division, PWD, Varanasi, in contravention of Sections 51 of the Waqf Act, 1995. The proviso to

5 'Waqf Board' for short

6 'Waqf Act, 1995' for short

Section 51(a) stiputes that acquisition shall not be in contravention of the Act of 1991. Therefore, no acquisition proceedings could be taken of the places of worship, which are within the purview of Section 4 of the Act of 1991. It is also averred that the Waqf Board, in connivance with other Authorities concerned, issued the said letter dated 22.04.2026, saying that said ancient mosques would be taken over in acquisition proceedings. There are assertions in paragraph no. 4 of the supplementary affidavit that the six ancient mosques situate at Dalmandi are covered under Section 4 of the Act of 1991, which cannot be acquired in any mode whatsoever, as also with the consent of the officer bearers/management of the said ancient mosques.

23. Heard Mr. Quazi Mohammad Akaram, learned Counsel for the petitioners, Mr. Mahesh Chandra Chaturvedi, learned Additional Advocate General assisted by Mr. Suresh Singh, learned Additional Chief Standing Counsel appearing for the State-respondents, Mr. Vineet Sankalp, learned Counsel appearing for the Nagar Nigam, Varanasi and Mr. Ravi Prakash Pandey, learned Counsel appearing on behalf of the Varanasi Development Authority, Varanasi[7].

24. Learned Counsel for the petitioners has supported the writ petition on the various grounds already noticed above.

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7 'VDA' for short

25. The learned Additional Advocate General appearing on behalf of the State has submitted that the writ petitioners acknowledge that they are tenants and shopkeepers of different shops in Dalmadi Market/Street bearing numbers CK43/168-169, CK68/1, CK69/32, CK43/147, CK68/36 and CK43/181. In support of this claim of theirs, the petitioners have certain copies of rent agreements, rent slips and electricity bills, out of which, three in number are unregistered agreements on non-judicial stamps in the form of notarial affidavit. The inference is, therefore, clear that they are not owners of the buildings in question, but tenants.

26. A perusal of the writ petition clearly demonstrates that the petitioners have not submitted any application, relating to the reliefs which they seek before this Court by the issue of an *mandamus*. Under the law governing *mandamus*, it cannot generally be granted, unless the petitioner has first made a formal demand for justice before the authority sought to be commanded, who has refused to oblige or is completely inactive. A *mandamus* is an extraordinary prerogative writ rather than a right. It is a settled law that demand for justice and its refusal must proceed with filing of a writ petition, praying for the issue of a *mandamus*. It must be shown by evidence that there was a distinct demand by the party applying for a *mandamus*. Reference is made to the consistent holding of the Supreme Court in **Saraswati Syndicate Ltd. v.**

Union of India[8], Amrit Lal Berry v. Collector of Central Excise[9] and **Kamini Kumar Das v. State of West Bengal[10]**, where it has been held that before approaching a High Court, the absence of a prior written representation of demand for justice renders the petition fundamentally defective.

27. It is emphasised by the learned Additional Government Advocate that the petitioners have annexed a letter dated 03.06.2025 issued by the Executive Engineer, Provincial Division, PWD, Varanasi, addressed to one Mirza Saif Baig, under the Right to Information Act, 2005, wherein it has been clearly found that land/building, which may be utilised for widening of the road, may be taken after execution of sale deeds, on the basis of mutual agreement, as provided under the Government Order dated 19.03.2015 or acquired under the Act of 2013. The Act of 2013 clearly provides compensation for land owners and rehabilitation and resettlement, entitlement for all affected families, in accordance with the provisions of the said Act, which includes the First and the Second Schedule. Therefore, the apprehension of the petitioners are unfounded. The land/building falling under the area of road widening is being taken up for execution of sale deeds on the basis of agreement and payment of appropriate compensation, and those who do not agree for execution of sale deeds on the basis of agreement, proceedings have been initiated for

8 AIR 1975 SC 460
9 AIR 1975 SC 538
10 AIR 1972 SC 2060

acquisition of the land/building under the Act of 2013, and in this regard, notification under Section 11 of the Act of 2013 has been issued after completing necessary formalities, that insofar action being taken by the VDA or the Nagar Nigam, Varanasi is concerned, that is quite independent of the State Government acquiring land for road widening in accordance with the Act of 2013. Those bodies are proceeding in individual cases under The Uttar Pradesh Urban Planning and Development Act, 1973[11] or The Uttar Pradesh Municipal Corporation Act, 1959[12]. Those proceedings are on considerations relevant under the last mentioned statutes, which the Municipal Corporation and the Development Authority are charged with their obligation of implementing.

28. It is next submitted by Mr. Chaturvedi, learned Additional Advocate General that the petitioner have referred to six mosques in the Dalmandi area in paragraphs nos. 14, 31, 32, 33 and 34 of the writ petition, which cannot be disturbed, in view of the provisions of the Act of 1991. They have referred to the provisions of Sections 2(a), 2(b), 4 and 7 of the Act of 1991. The learned Additional Advocate General submits that neither the Act of 1991 nor the Waqf Act, 1995 prohibits land acquisition under the Act of 2013. The Act of 1991 does not prohibit the Government from acquiring religious land for larger public purposes. Under the Act of 2013,

11 'Act of 1973' for short
12 'Act of 1959' for short

the Government has the sovereign power to acquire any property, including religious property, for public purpose, such as building roads, highways or public infrastructure. The Act of 2013 allows this, provided that fair compensation, and where applicable, rehabilitation are granted. The Act of 1991 is intended solely to prevent conversion of a public place of worship from one religion or denomination to that of another religion or another denomination of the same religion, thus preserving *status quo* as existed on 15th August, 1947. The Act of 1991 is not a shield against acquisition by the State for public purpose or welfare. Learned Additional Advocate General, in this regard, has placed reliance upon the authority of this Court in **Church of North India Trust Association v. Union of India and others**[13].

29. It is further argued that the petitioners have nowhere shown any special authority with regard to the six mosques referred to in paragraph no. 14. It is next submitted that the Waqf Act, 1995 does not prohibit to take over of land of a Waqf, under the Act of 2013, subject only to the provisions Sections 51 and 91 of the Waqf Act, 1995. It is, in fact, permissible under the provisions of Section 51 and 91 of the Waqf Act, 1995.

30. We have heard learned Counsel for parties at considerable length at the motion stage.

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13 2016 SCC OnLine All 1985 : AIR 2017 All 143

31. Upon hearing learned Counsel parties, what we find is that the petitioners have mixed up their rights, some of which they have and some of which they do not. The petitioners are admittedly tenants and shopkeepers of six shops bearing numbers CK43/168-169, CK68/1, CK69/32, CK43/147, CK68/36 and CK43/181, situate at Dalmandi Market/Street, Varanasi. They are admittedly not the owners of the said shops. It is true that they might have had their business in the said shops since the time of their ancestors, but that would not grant them anything more than their tenancy rights. They hold on lease agreements and rely on rent slips, reiterating their status as tenants in six of the shops located in Dalmandi. It is not that since their shops are running for a long time, when their ancestors were doing the same business, that their rights have been enlarged to some kind of a proprietorship.

32. As it appears, Rashid Ali, who a tenant in Shop No. CK-43/168-169, whereof the owners are Haji Mohammad Saleem and Mohammad Saleem pays a monthly rent and the rent receipt for the rent last paid by him relating to the period August to December, 2004 is for sum of ₹1750. There is a photostat copy of the rent agreement annexed by petitioner no. 2, Mohammad Dilshad, who is a tenant in Shop No. CK68/36. The rent agreement is dated 20.01.2023, where the landlord is one Syed Akhtar Ali. A shop is held on a monthly rent of ₹2200. There are similar other rent agreements, where shops are held on whatever are the settled monthly

rents, evidenced in some cases by rent agreements, and in others, by rent receipts. The rights of these petitioners are, therefore, limited to their tenancies.

33. We note that the landlords and owners of the premises have not come forward to question the road-widening project or its effect on their properties. We would think that the petitioners are more or less here, in order to protect their business and source of livelihood, rather than proprietary rights. When it comes to acquisition of property under the Act of 2013, it is largely the title holder who has locus to object, negotiate a sale or suffer an acquisition. The tenant hardly has any rights. The moment the owner's rights vest in the State either by transfer of land or acquisition, the land vests free from all encumbrances in the State. May be in the case of a sale deed, arrangement would have to be made about the rights of the tenants, because, upon a voluntary transfer of property by owner to the State for a negotiated consideration, the tenant might become the State's tenant. That might not at all happen in case of acquisition. The tenants, in a situation like this, would hardly have rights to question the acquisition of property.

34. It also appears that in some cases, the Nagar Nigam is taking action under the Act of 1959. That action would be on very different premises. It would mostly be putting down certain structures that are dilapidated, in accordance with the provisions of the Act of 1959. No such notice has

been questioned in this petition by the petitioners, nor have they said that they have been served any such notice by the Corporation. It is possibly about some other buildings in the Dalmandi Street, which are dilapidated, but not involved in this petition.

35. Likewise is the case with the action taken by the Development Authority. Their province and powers are limited to the Act of 1973. They usually proceed against a building for demolition under Section 27 of the Act of 1973, if it is constructed without a sanctioned plan or map, or in violation thereof. It is not the petitioner's case that they are facing any demolition notice from the VDA or any proceedings for demolition under Section 27 of the Act aforesaid have been initiated against them. Any relief, therefore, sought against the Development Authority is besides the point.

36. The petitioners, who are tenants in certain shops, as already said, located in the Dalmandi Street, have mixed up another cause of action, and that is about protecting the six mosques located in the Dalmandi area from acquisition. They seem to urge that since they are Muslims, they have a right to protect these mosques, that are Waqf properties. From the primary cause of action involved in the writ petition, which is about protecting shops, wherein the petitioners are tenants, protecting six mosques located in the area, would make us think that the cause of action is rather multifarious, and seeks to agitate very different kind of rights.

The mosques are admittedly registered Waqf, with their own Mutawalli in each case. No doubt, members of the Muslim community may come forward in certain cases, but essentially it is the Mutawalli and the Waqf Board, who have to protect such properties. We have, nevertheless, heard the petitioners on this issue as well. If we hear the petitioners on this issue and pass judgment, it might prejudice the rights of the Mutawalli and the Waqf Board, who might have something to say in the matter, and their locus is pre-eminent, and not of the petitioners'.

37. Since the learned Counsel for the petitioners were, nevertheless, very emphatic about their submissions that they have a right to ensure that the mosques are not acquired, as it is a violation of the provisions of that all-time shield, to wit, the Act of 1991, we have considered their arguments in this regard, limited to their rights as members of the Muslim community. They have relied upon the provisions of Section 2(b), 2(c), 3, 4 and 7 of the Act of 1991. These read :

> **2. Defintions.–** In this Act, unless the context otherwise requires,–
>
> ...
>
> **(b)** "conversion", with its grammatical variations, includes alteration or change of whatever nature;
>
> **(c)** "place of worship" means a temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called.

3. Bar of conversion of places of worship.–No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.

4. Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc. – (1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority:

Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall not so abate and every such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1).

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,-

(a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any other law for the time being in force;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.

38. They have also relied upon the provisions of Sections 51 and 91 of the Waqf Act, 1995. Sections 51 and 91 of the Waqf Act, 1995 read :

51. Alienation of waqf property without sanction of Board to be void.-(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013).

(1A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void ab initio.

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under [the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that-

(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991 (42 of 1991);

(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c) no alternative land is available which shall be considered as more or less suitable for that purpose; and

(d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property.

91. Proceedings under Act 1 of 1894.-(1) If, in the course of proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) or under any law for the time being in force relating to the acquisition of land or other property, and before an award is made, in case the property under acquisition is waqf property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

Explanation.–The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of land or other property thereunder, as a reference to the authority under such other law competent to make such award.

> (2) Where the Board has reason to believe that any property under acquisition is waqf property, it may at any time before the award is made appear and plead as a party to the proceeding.
>
> 3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under section 77 or section 78 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard.
>
> (4) Any order passed [under section 77 or section 78 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013)] or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard, 2[shall be kept in abeyance relating to portion of the property claimed by the Board, if the Board), within one month of its coming to know of the order, applies in this behalf to the authority which made the order.
>
> Provided that the Collector after hearing the parties concerned shall make the order within one month of the application of the Board.

39. The foremost to be considered is the Act of 1991, regarding which, the submission of the learned Counsel for the petitioners is that it would make the acquisition of the mosques absolutely illegal, because these mosques are in existence much prior to the 15th day of August, 1947. We notice that the place of worship has been defined as a Temple, Mosque, *Gurudwara*, Church, Monastery or any other place of public religious

worship of any religious denomination. Conversion means alteration or change of whatever nature.

40. Section 3 of the Act of 1991 prohibits the conversion of a place of worship of any religious denomination or a sect thereof into a place of worship of another sect of the same religious denomination or a different religious denomination.

41. Section 4 of the Act of 1991 makes a declaration that there shall be no change in the religious character of a place of worship existing on the 15th day of August, 1947. Sub-section (3) of Section 4 provides that no place of worship referred to in sub-Section (1) and sub-Section (2) of Section 4 of the Act of 1991, which is an ancient and historical monument, or an archaeological site, or covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958, shall be covered by the declaration under Section 4.

42. Now, Sections 3 and 4 of the Act of 1991 have to be harmoniously construed, in particular, sub-Section (1) of Section 4. Read in isolation, sub-Section (1) of Section 4 might seem to declare that the religious character of a place of worship existing on the 15th day of August, 1947 is immutable, to wit, if it was a temple, it will remain a temple, if a church, it would remain that, and if a mosque, it would continue to be so. But reading it this way, would be a misconstruction of the scope of the Statute.

When Section 4(1) of the Act of 1991 is read together with Section 3, it is evident that there is a prohibition imposed by Section 3 upon any person converting any place of worship of any religious denomination or a sect thereof into a place of worship of a different sect of the same denomination or to that of a different religious denomination. Sections 3 and 4 of the Act of 1991, when harmoniously construed, prevent the religious character of a place of worship belonging to a religious denomination from being changed into a place of worship of another religious denomination, from whatever it was on the 15th day of August, 1947. In short, a temple on 15th August, 1947 cannot be converted to a church or a mosque, and likewise, a mosque or a church to a temple. The purport of the Act of 1991 is not to place beyond the pale of authority of the State's right as the owner paramount of all lands in the territory of India and to acquire and use it for any public purpose, subject, of course, to the owner's right to receive just and fair compensation. That is what the doctrine of eminent domain, after all, means. The Act of 1991 is not meant to derogate from that right of the State.

43. The object of the Act of 1991 also shows that it was enacted to prohibit conversion of any place of worship and when read with Section 3, the scope of the Act is limited to conversion of a place of worship of one religious denomination into another, or from one sect of the same

denomination into another. The Act of 1991 does not, at all, go beyond the said prohibition.

44. Section 51 of the Waqf Act, 1995 (as amended by Act No. 14 of 2025) provides, by virtue of the second proviso to sub-Section (1A) of Section 51 that nothing contained in this sub-Section, that is to say, the prohibition on sale, gift, exchange, mortgage or transfer of Waqf property being void, shall affect any acquisition of Waqf properties for a public purpose, under the Act of 2013, or any other law relating to acquisition of land, if such acquisition is made in consultation with the Board. The Board, of course, means the Waqf Board. The third proviso says that the acquisition shall not be in contravention of the Act of 1991, the provision upon which learned Counsel for the petitioner has much harped.

45. We have already held that the Act of 1991 prohibits the conversion of place of worship of one religious denomination into another. It does not derogate from the State's authority to acquire any place of religious worship for a secular and public purpose, like development of a road or augmentation of infrastructure or any similar activity. In this connection, reference may be made to the remarks of the Constitution Bench of the Supreme Court in **Dr. M. Ismail Faruqui and others v. Union of India and others**[14], where it has been observed :

> **80.** It has been contended that a mosque enjoys a particular position in Muslim Law and once a mosque is established and

14 (1994) 6 SCC 360

prayers are offered in such a mosque, the same remains for all time to come a property of Allah and the same never reverts back to the donor or founder of the mosque and any person professing Islamic faith can offer prayer in such a mosque and even if the structure is demolished, the place remains the same where the namaz can be offered. As indicated hereinbefore, in British India, no such protection was given to a mosque and the mosque was subjected to the provisions of statute of limitation thereby extinguishing the right of Muslims to offer prayers in a particular mosque lost by adverse possession over that property.

81. Section 3(26) of the General Clauses Act comprehends the categories of properties known to Indian Law. Article 367 of the Constitution adopts this secular concept of property for purposes of our Constitution. A temple, church or mosque etc. are essentially immovable properties and subject to protection under Articles 25 and 26. Every immovable property is liable to be acquired. Viewed in the proper perspective, a mosque does not enjoy any additional protection which is not available to religious places of worship of other religions.

82. The correct position may be summarised thus. Under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession (See *Mulla's Principles of Mahomedan Law*, 19th Edn., by M. Hidayatullah — Section 217; and *Shahid Ganj* v. *Shiromani Gurdwara* [AIR 1940 PC 116, 121 : 44 CWN 957 : 67 IA 251]). If that is the position in law, there can be no reason to hold that a mosque has a unique or special status, higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is not an essential part of the practice of the religion of Islam and *namaz* (prayer) by Muslims can be offered anywhere, even in open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Irrespective of the status of a mosque in an Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power, its status and immunity from acquisition in the secular ethos of India under the

> Constitution is the same and equal to that of the places of worship of the other religions, namely, church, temple etc. It is neither more nor less than that of the places of worship of the other religions. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practise the religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right.

(emphasis by Court)

46. In **Yusuf Ajij Shaikh and others v. Special Land Acquisition Officer No. 2, Pune and others**[15], dealing with the issue that we have under consideration, it has been remarked by P.S. Patankar, J. :

> **8.** The new question now raised is whether this acquisition can be dropped in view of the enactment i.e. The Places of Worship (Special Provisions) Act, 1991 (hereafter referred to as the Places of Worship Act). The learned Advocate for the Appellants drew my attention to the Preamble of the said Act which says that this is an Act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947. This is also to be found in section 4(1).
>
> Section 2(b) defines 'conversion' which is as follows:—
>
> > "2(b) "conversion" with its grammatical variations, includes alteration or change of whatever nature;"
>
> Section 3 is a charging section. It says that "No person shall convert any place of worship of any religious

15 (1995) 1 Mah LJ 483 : 1994 SCC OnLine Bom 246

denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof". The learned Advocate for Respondents submits that this enactment has no application as far as the acquisition of land under the Land Acquisition Act is concerned. The ban is on persons to convert, alter or change from one section etc. to another. This has been done with a view that persons of one community or section do not trespass and usurp the land or religious place of some other religious community or section and convert it into their place of worship. This has been done with a view to maintain communal harmony in the country. He submits that this is also clear from section 6 which provides for punishment for contravention of section 3. Section 6(1) provides for punishment to person who contravenes section 3 with imprisonment for a term which may extend to three years and shall also be liable to pay fine. Section 6(2) and section 6(3) provide for attempt and abetment in that respect. The submission made on behalf of respondents deserves to be accepted. In this case land is sought to be acquired under the provisions of the Land Acquisition Act. No provision of the Places of Worship Act bans such acquisition expressly or impliedly. The provisions of the Land Acquisition Act are not abrogated. It is very, clear that this Act has been enacted for the limited purpose to prohibit and punish one section or community who illegally takes over the land of religious worship of another community or section and changes its character. It is not possible to accept the submission that acquisition of land under the Land Acquisition Act loses its character and therefore prohibited. Under this Act, conversion contemplated by section 3 is by persons of the place of worship of one community or section to religious place of worship of some other community or section. It is not mere conversion as defined. This legislative intent is clearly discernible and done with a view to see that communal harmony is not disturbed by such acts of one community or section or denomination. The injunction under section 4(1) is for the people of all communities to see that the religious character of a place of worship existing on the 15th day of August, 1947 is maintained and continued and

> there is no conversion. This cannot cover in its sweep the acquisition of land under the Land Acquisition Act. It is not merely because there is a loss of Dargah or the Mosque this would amount to conversion in view of section 3. This is also clear from section 6 which prescribes punishment to those persons who indulge in such conversion. Hence I reject this contention.

47. We were not inclined to go into this issue, because the petitioners' rights are very limited and the cause of action, which they essentially canvass, would not logically involve the issue about the six ancient mosques being acquired for any public purpose. But, since the petitioners have canvassed that point much vociferously, we have dealt with it in commensurate measure, without prejudice to the rights of the State, the Waqf Board and the Mutawalli of mosques concerned to suit their rights in appropriate proceedings, if and when the occasion arises. So far as the petitioners are concerned, we are of opinion that they have no right to any of the reliefs that they seek.

48. In the result, this petition **fails** and stands **dismissed**.

49. There shall be no order as to costs.

(ARUN KUMAR, J.) **(J.J. MUNIR, J.)**

Allahabad
July 02, 2026
I. Batabyal

Whether the order is speaking : Yes
Whether the order is reportable : Yes

Digitally signed by :-
ISHAN BATABYAL
High Court of Judicature at Allahabad