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MOHD. ASLAM OBHURE, ACCHAN RIZVI

v.

UNION OF INDIA

STATE OF UTTAR PRADESH AND ORS.

B

OCTOBER 24, 1994

[M.N. VENKATACHALIAH, C.J. AND G.N. RAY, J.]

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Contempt of Courts Act—Contempt proceedings—Failure of obedience to judicial pronouncement—If reasonable steps not taken to prevent violation of orders of Court—Presumption that Government intended not to take such preventive steps—No immunity for any authority of Government, if a personal element shown in act of disobedience of order of Court, from consequence of an order of Court.

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Contempt of Courts Act—Offence of Contempt of Court—Wilful disobedience of order of Court—Babri Masjid Case—Undertaking given by Chief Minister of a State both in his personal capacity and on behalf of his Government—Flagrant breach of undertaking—Personal element shown in act of disobedience of order of Court—Reasonable steps not taken to prevent violation of order of court—Chief Minister of the State convicted of an offence of Contempt of Court—Sentence of imprisonment of one day with fine of Rs. 2,000 imposed.

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A complaint of wilful disobedience of orders of the Supreme Court has been instituted against the then Chief Minister of the State of Uttar Pradesh. The subject matter of these contempt proceedings arises out of events that occurred during the month of July 1992 in relation to a land in Ayodhya which was acquired by the State Government, the acquisition was ostensibly for the purpose of developing the acquired land as an amenity for pilgrims at Ayodhya. The acquisition proceedings were challenged in those proceedings, the interlocutory order came to be made incorporating the undertaking given by the Chief Minister before the National Integration Council.

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It was alleged in these contempt proceedings that these orders made by the Supreme Court have been deliberately and wilfully flouted and disobeyed by the State of Uttar Pradesh. Certain affidavits were filed pointing out that large scale construction work of a permanent nature was carried out on the land in utter disregard of the order of this Court. It was further alleged in these contempt petitions that the

then Chief Minister of the State, in view of his ideological and political affinity with the Bhartiya Janta Party and the Vishwa Hindu Parishad and their commitment to the building of Sri Ram Temple, deliberately encouraged and permitted the grossest violation of the Court's orders.

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The defence in substance was that the constructions were initially of the nature of a 'levelling operations' done by the State Government for the pilgrims. However later the large congregation of Sadhus who had assembled at the land took upon themselves to make the constructions and that their number was so large that any coercive preventive action would have triggered off an adverse reaction and that even those constructions which were in the nature of platform did not amount to permanent structure such as were prohibited by the order of the Court.

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The questions that arose for consideration were; (1) Whether the undertaking given by the Chief Minister before the National Integration Council which was in terms recapitulated and incorporated in the order of this Court could be said to be an undertaking given by the Chief Minister personally or was merely an undertaking on behalf of the U.P. Government,

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(2) Whether there was any construction of a permanent nature carried on the land in wilful disobedience of the orders of the Court;

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(3) Whether these construction activities were carried on by or at the instance of the State Government or its authorities or were done in connivance with and assistance and encouragement of State Government;

Disposing of the matter, this Court

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HELD 1.1. On the issue whether there was construction-massive construction - in violation of the Court's order, no other material than the very admission of the State authorities are sufficient to justify a finding that there were such violations of the Court's orders. There was massive work undertaken and executed on the land in violation of the Court's order. (114-H)

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1.2. It is not merely positive acts of violations but also surreptitious and indirect aids to circumvention and violation of the orders that are equally impermissible. If reasonable steps are not taken to prevent the violation of the order of the Court, Government cannot be heard to say

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A that violation of the orders were at the instance of others. The presumption is that the Government intended not to take such preventive steps. In the facts and circumstances of the case, this Court is unable to persuade itself to the view that the Government was helpless and the situation that had developed was in spite of all reasonable steps taken by the Government. Indeed there is no indication that the Government bestirred itself to take any step, reasonable or otherwise, to prevent large scale building material getting into the site. The Chief Minister of the State of Uttar Pradesh having given a solemn assurance to the National Integration Council and permitted the terms of that assurance to be incorporated as his own undertaking to this Court and allowed an order to be passed in those terms cannot absolve himself of the responsibility unless he placed before the Court sufficient material which would justify that he had taken all reasonable steps and precautions to prevent the occurrence. Indeed, if such reasonable steps had been taken he could not be faulted merely because he did not do the best by the standards of others. In this case, there is no explanation at all apart from the fact that the Sadhus had congregated in that place in large number, as to what step the Government took to prevent the constructional equipment from getting into the site. In the absence, this Court is constrained to hold that the Government failed to take steps to prevent the grossest violation of the order of this Court. (117-G-H, 118-A-D)

E *William G. Cooper, Member of the Board of Directors of the Little Rock v. John Aaron, (348) US1, referred to.*

F 1.3. On the question as to whether the undertaking furnished by the Chief Minister was a personal undertaking or was it on behalf of the State of U.P., it is held it was both. (118-E)

1.4. There is no immunity for any authority of Government, if a personal element is shown in the act of disobedience of the order of the Court, from the consequence of an order of the Court. (118-F)

G 1.5. The State Government is, therefore, liable in Contempt. A Minister or officer of Government is also either in his official capacity or if there is a personal element contributing to contempt, in his personal capacity, liable in contempt. (122-B)

H 1.6. The undertaking given by the Chief Minister was both in his personal capacity and on behalf of his Government. (122-C)

There has been a flagrant breach of that undertaking. There has been wilful disobedience of the order. The Chief Minister is convicted of the offence of Contempt of Court. (122-C) A

In re M. v. Home Office, (1994) 1 AC 377 and State of Bihar v. Rani Sonabati Kumari, AIR (1961) SC 221, relied on.

1.7. Since the contempt raises larger issues which affect the very foundation of the secular fabric of our nation, the Chief Minister is sentenced to a token imprisonment for one day with a fine of Rs. 2,000. (122-D) B

CIVIL ORIGINAL JURISDICTION : Contempt Petition No. 97/92. C

IN

Writ Petition No. (C) 977 and 972 of 1991.

Under Article 32 of the Constitution of India. D

O.P. Sharma and M.M. Kashyap for the Peitioner.

V.M. Tarkunde, A.K. Goel, R.B. Misra, Ms. Kamini Jaiswal, B.Y. Kulkarni, Randhir Jain, Atul Y. Chitale, Ms. Suchitra Chitale, A.P. Medh, P. Parmeswaran, Ms. A. Subhashini, Uday U. Lalit (N.P.), A.M. Khanwilkar (N.P.), P.P. Tiwari (N.P.), S. Mukherjee (N.P.) and S.A. Syed for the Respondents. E

The following Order of the Court was delivered.

These petitions raise certain important issues as to the amenability of the State and of its Ministers to be proceeded against in contempt for failure of obedience to the judicial pronouncements. These proceedings have the echo of the disastrous event that ended in the demolition on the 6th December, 1992 of the disputed structure of 'Ram Janam Bhumi-Babri Masjid' in Ayodhya. Thousands of innocent lives of citizens were lost, extensive damage to property caused and more than all a damage to the image of this great land as one fostering great traditions of tolerance, faith, brotherhood amongst the various communities inhabiting the land was impaired in the international scene. Though the proceedings for suo motu contempt against the then Chief Minister of the State of Uttar Pradesh and its officers in relation to the happening of the 6th December, 1992 were initiated those are pending and shall be dealt with independently. F G H

A The subject matter of the present contempt proceedings, however, arises out of certain antecedent events that occurred during the month of July 1992 in relation to an extent of 2.77 acres of land in Ayodhya which was acquired by the State Government pursuant to a notification dated 7th October, 1991, under Section 4 of the Land Acquisition Act, 1894. The acquisition was ostensibly for the purpose of developing the acquired land as an amenity for pilgrims at Ayodhya. The acquisition proceedings were challenged both before the High Court and this Court. In those proceedings, three interlocutory orders came to be made-----two by the High Court and one by this Court. In order to put the complaint of wilful disobedience of these orders by the State of Uttar Pradesh and its Chief Minister, Sri Kalyan Singh, it is necessary to advert to two of these orders.

C On 15th November, 1991 in W.P. No. 1000 of 1991 this Court made the following order :

D “The petitioners have approached this Court by way of these petitions under article 32 of the Constitution as Public interest litigation challenging the acquisition covered by two Notifications dated October 7, and October 10, 1991 made under Section 4 (1) of the Land Acquisition Act, 1894 under which certain property in Faizabad close to Ram-Janma Bhumi-Babri Masjid Complex has been notified for acquisition for the purpose of development of pilgrimage and providing amenities to them at Ayodhya.”

E This Court further said :-

F “In the meantime, as we have been told at the Bar, there was a meeting at the national level of the Integration Council and the Chief Minister of the State as it appears from the affidavit of the Home Secretary of the respondent-State dated 13th of November, 1991 made certain statements to the council. These have been extracted in paragraph 3 of the affidavit and read thus:

G “The Chief Minister has made several statements at the National Integration Council meeting, on 2nd November, 1991. On the basis of the statements, the resolution of National Integration Council was passed on 2nd November, 1991. The Resolution itself states:”

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"The Council noted the following assurances given by the Chief Minister of Uttar Pradesh: A

(i) All efforts will be made to find an amicable resolution of the issue;

(ii) Pending a final solution, the Government of Uttar Pradesh will hold itself fully responsible for the protection of the Ram Janma Bhumi-Babri Masjid structures; B

(iii) Orders of the Court in regard to the land acquisition proceedings will be fully implemented; and

(iv) Judgment of the Allahabad High Court in the cases pending before it will not be violated. C

We shall take it, and Mr. Jaitley has no objection to our doing so, that the State of Uttar Pradesh remains bound by what has been stated in this paragraph and this shall be obligation of the State of Uttar Pradesh to stand by our order of today which is made after taking into account the stand of the State of Uttar Pradesh as disclosed by the Chief Minister and reiterated in the affidavit of the Home Secretary. It shall, therefore, be taken as a representation to the Court on which we have made this Order. D E

On 15th July, 1992 the High Court of Allahabad in C.M.A. No. 83 (o) /92 made an order to the following effect: -

"Learned Advocate General has prayed for and is allowed 3 days time to file counter Affidavit. 3 Days time is allowed for filing rejoinder to the petitioner the list immediately thereafter (.) k In the meantime the opposite parties are restrained from raising any construction on the land (.) If there is any necessity for doing something on the land for its use, prior permission from the Court would be obtained (.)" F G

3. The grievance in these contempt proceedings is that those orders have been deliberately and wilfully flouted and disobeyed by the State of Uttar Pradesh. Though the petitions for contempt which were lodged in the months of February and March 1992 respectively, merely alleged there were demolitions of certain structures in violation of the interdiction in that H

- A behalf contained in the order of this Court dated 15th November, 1991. However, later, on as events developed, certain subsequent events were brought to the notice of the Court by affidavits which came to be filed pointing out that large scale construction work of a permanent nature was carried out on the land in utter disregard of the orders of this Court. By order dated 5th August, 1992 this Court while recording the finding that the
- B alleged demolitions did not strictly fall within the interdiction of the order of this Court dated 15th November, 1991, however, found that there were certain constructional activity undertaken on the land which prima-facie violated the orders of this Court.

- C It is to be mentioned in this context that Sri Kalyan Singh, the then Chief Minister of the State of Uttar Pradesh, who was initially *eo nomine* a party in both the proceedings was, however, deleted from the array of parties in contempt petition No. 97 of 1992. Sri Kalyan Singh, however, continued to be party in contempt petition No. 102 of 1992.

- D 4. In view of the fact that the allegations of large scale violation of the order of this Court and of the High Court were in the subsequent affidavits an opportunity was afforded to the State of Uttar Pradesh and Sri Kalyan Singh to traverse these allegations. Sri K.K. Venugopal, learned senior counsel who appeared for both the State of Uttar Pradesh and Sri Kalyan Singh made certain statements which are incorporated in the order dated 5th
- E August, 1992 :-

- F “Shri K.K. Venugopal, learned counsel appearing for the respondents in both the contempt cases submitted that the respondents are placed in a disadvantageous position as to the sufficiency of opportunity to traverse the allegations made from time to time in these contempt proceedings. He submitted that the two contempt petitions had been filed in the months of February and April 1992 respectively and the notices issued to the State of Uttar Pradesh and other respondents confined themselves to certain specific acts of
- G contempt specifically alleged in the petitions as originally lodged. Learned counsel says that later on, from time to time, the State and other respondents are called upon to meet a shifting and entirely different set of allegations, said to arise out of certain events that occurred subsequent to the filing of the contempt petitions, particularly in the month of
- H July, 1992.

Shri Venugopal stated that without being understood to be insistent upon a technicality that a further notice on the initiation of contempt is required to be issued on the new set of allegations, his clients' stand is that they be afforded a reasonable opportunity to traverse, in a comprehensive way, and cumulatively all the allegations contained in the affidavits filed from time to time by both the petitioners, as also traverse the material such as photographs etc. relied upon in support of the allegations. A B

3. We think that this prayer is reasonable and the respondents should have such an opportunity. They shall meet the case as presented in the affidavits filed by the petitioners in the month of July, 1992 in the pending contempt petitions in regard to the allegations of continued violation of the orders of the Courts, said to have occurred during the month of July, 1992." C

Thereafter, counter-affidavits were filed by the officers of the U.P. Government. Sri Kalyan Singh, however, did not choose to file an affidavit of his own. D

5. The gravamen of the charge in these contempt petitions is that Sri Kalyan Singh, the then Chief Minister of the State, in view of his ideological and political affinity with the Bharatiya Janta Party and the Vishwa Hindu Parishad and their commitment to the building of Sri Ram Temple, deliberately encouraged and permitted the grossest violation of the Courts' orders. E

The defence in substance, is that the constructions were initially of the nature of a 'levelling operations' done by the State Government for enabling the parikrama facilities for the pilgrims. However later the large congregation of Sadhus who had assembled at the land took upon themselves to make the constructions and that even those constructions which were in the nature of a platform did not amount to permanent structure such as were prohibited by the order of the Court. F

6. The questions that therefore arise for consideration are : G

(i) Whether the undertaking given by the Chief Minister before the National Integration Council which was in terms recapitulated and incorporated in the order dated 15th November, 1991 of this Court could be said to be an H

A undertaking given by the Chief Minister personally or was merely an undertaking on behalf of the U.P. Government;

(ii) Whether there were any construction of a permanent nature carried on the land in wilful disobedience of the orders of the Court;

B (iii) Whether these constructional activities were carried on by or at the instance of the State Government or its authorities or were done in connivance with and assistance and encouragement of the State Government; or were they carried out inspite of all reasonable steps taken in that regard by the State Government and the Chief Minister to prevent the same; and

C (iv) Whether the State Government and the Chief Minister were not liable for contempt for any alleged wilful disobedience of the orders of this Court.

D 7. The purport of the defence— as gatherable from the various affidavits and counter-affidavits filed from time to time— does not seem to dispute that constructions of a substantial nature were carried out on the land in the month of July, 1992. Implicit in these admissions is that had these works and activities been carried out by the State Government and its authorities, there would be no doubt whatsoever that constitute a flagrant violation of the orders of the Court. What was, however, sought to be pleaded was that the area in question, by a long religious tradition in Ayodhya, attracts a large number of pilgrims and particularly in the month of July which coincides with the period of 'Chaturmas' where a large number of Sadhus congregate to celebrate 'Sarvadev Anusthan'. It was urged that there Pilgrim-Sadhus embarked upon the construction of the cement concrete platform and that the number of their was so large that any coercive preventive action would have triggered off an adverse reaction which might have endangered the safety of the disputed 'Ram Janam Bhumi-Babri Masjid Structure' which was situate in the immediate vicinity and for whose protection the Government stood committed. In view of these conflicting considerations and of the risks involved in the operations

E Government felt compelled to abstain from any coercive steps to prevent the constructions by the pilgrims. We shall later advert to the merits and *bona fides* of this version. Suffice it to say here that at no point of time did the Chief Minister seek before Court to be absolved of his undertaking in view of these alleged conditions. They are now put forward as a defence in

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H the contempt action.

8. But it is necessary to say that in a Government of laws and not of men the Executive Branch of Government bears a grave responsibility for upholding and obeying judicial orders. It is perhaps worthwhile recalling what the Supreme Court of United States observed in *William G. Cooper, Member of the Board of Directors of the Little Rock v. John Aaron*, (358) US.1 where, in his concurring opinion Justice Frankfurter said:

“The use of force to further obedience to law is in any event a last resort and one not congenial to the spirit of our Nation.....Violent resistance to law cannot be made a legal reason for its suspension without loosening the fabric of our society. What could this mean but to acknowledge that disorder under the aegis of a State has moral superiority over the law of the Constitution?”

The historic phrase ‘a government of laws and not of men’ epitomizes the distinguishing character of our political society. When John Adams put that phrase into the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic.

Compliance with decisions of this Court, as the constitutional organ of the supreme law of the land, has often, throughout our history, depended on active support by state and local authorities. It presupposes such support. To withhold it, and indeed to use political power to try to paralyse the supreme law, precludes the maintenance of our federal system as we have known and cherished it for one hundred and seventy years.

Lincoln’s appeal to “the better angels of our nature” failed to avert a fratricidal war. But the compassionate wisdom of Lincoln’s First and Second Inaugurals bequeathed to the Union, cemented with blood, a moral heritage which, when drawn upon in times of stress and strife, is sure to find specific ways and means to surmount difficulties that may appear to be insurmountable.”

Dicey, in his *Law of the Constitution*, (10th Edition p. 193-94) said :

A “When we speak of the ‘rule of law’ as a characteristic of
our country, (we mean) not only that with us no man is
above the law, but (what is a different thing) that here every
man, whatever be his rank or condition, is subject to the
ordinary law of the realm and amendable to the jurisdiction
B of the ordinary tribunals. In England the idea of legal
equality, or of the universal subjection of all classes to one
law administered by the ordinary courts, has been pushed to
its utmost limit. With us every official, from Prime Minister
down to a constable or a collector of taxes, is under the
same responsibility for every act done without legal
justification as any other citizen. The reports abound with
C cases in which officials have been brought before the
courts, and made, in their personal capacity, liable to
punishment, or to the payment of damages for acts done in
their official character but in excess of their lawful
authority. A colonial governor, a secretary of state, a
D military officer, and all subordinates though carrying out
the commands of their official superiors, are as responsible
for any act which the law does not authorise as is any
private and unofficial person.”

9. In these formative years of our nation building, it is more important
E than ever to recognise that in a pluralist society law is the greatest and the
only integrating factor. Respect for law and its institutions is the only
assurance that can hold a pluralist nation together. Any attempt to achieve
solutions of controversies, however, ideologically and emotionally
surcharged, not on the basis of law and through judicial institutions but on
the strength of numbers will subvert the fundamental values of our chosen
F political organisation. It will demolish public faith in the accepted
constitutional institutions and weaken people’s resolve to solve issues by
peaceful means. It will destroy respect for the Rule of Law and the
authority of Courts and seek to place individual authority and strength of
numbers above the wisdom of law. This is courting disaster, fratricidal
wars, civil commotion, disruption of everything that we hold sacred. The
G highest cherished value of our nationhood which is tolerance will be
distorted by such misguided enthusiasm.

10. On the issue whether there was construction --- massive
construction --- in violation of the Courts’ orders, no other material than the
very admissions of the State authorities are sufficient to justify a finding
H that there were such violation of the Courts’ orders.

In the Chief Engineer's Report appended to the counter-affidavit of Sri Prabhath Kumar, Principal Secretary to the Govt., Home Department, the following description of the nature of the work occurs:- A

"Foundation concrete has been laid in three layers as described in the enclosed site map in plan. It was seen on digging from the outer side, that the lowest layer had an average thickness of 62 cm. the middle layer had an average thickness of 60 cm. and the upper layer had an average thickness of 60 cm., Middle and upper layers have not been laid on the whole of the area in which foundation concrete has been laid on the lowest layer. B

Brick wall has been constructed in some part, the height of which is 1.56 meters, on the lowest layer of the foundation concrete, the location of which has been shown in the enclosed site map in plan. The brick work of the wall has been done with cement and sand-mortar. A brick wall touching the cut in the earth on mount close to the pipe barricading, has been constructed, the average height of which is 2.25 meters and cement and sand mortar has been used in it. Its location has been shown in the enclosed site map in plan." C D

Commenting on the possible purpose of this structure, Sri Prabhath Kumar himself says, 'however, according to the statements of those involved in the construction work it was intended to be the first step towards putting up of the "Singh Dwar" of the proposed "Ram Mandir" as and when the same would be constructed." E

In the report dated 18th July, 1992 by the District Magistrate and Senior Superintendent of Police, to the Chief Secretary, as to the nature and extent of construction, while admitting the progress of construction, the District Magistrate says :- F

"On 18.7.1992 at 8.45 to 9.30 a.m. we met Shri Ashok Singal and Shri Onkar Bhawe and requested them to have the work stopped in compliance with order dated 15.7.1992 of the High Court, responsibility for which had been entrusted to us. They informed that at 5 p.m. on 17.7.92 decision was taken in the meeting of about 50 saints at the Digamber Akhara that construction will not be stopped. In view of this decision construction could not be stopped and H

A they suggested that talks may be held with members of Temple Renovation Committee.”

11. This Court constituted a committee consisting of Sri S. Rai, Registrar General, Supreme Court; Professor K.K. Nayar, IIT Delhi; and Professor Arvind Krishan, School of Planning and Architecture, New Delhi.

B In the report of the Committee, the nature and the extent of construction is described thus:-

C “The area built-up can be visualised as 5 north-south strips arranged from the east to the west (for the purpose of computation and reference as shown in Appendix A2-1. Areas and dimensions of the first four strips increase step by step from one another. The fifth strip is cut back both in area and dimension. There are 3 layers of concrete in the structure (Annexure A1-2.). The first layer is about 0.62 m. thick and it covers the full area of 1060 sq. m. except for a circular opening of 7.1 m. diameter in the centre of the 4th strip. On the northern side, the top level of this layer of concrete merges with the ground: On all other sides this layer is only 10 cm. below the ground level. The second layer is 0.6 m. thick and has an area of 560 sq.m., including the circular opening. It is laid on the first layer over the strips 2 to 5 and with set-backs. Both these layers are fairly symmetrical about the east-west axis, except for small irregularities in the dimensions. The third layer is also 0.6 m. thick but covers only a small area of 130 sq.m. Bulk of concrete is laid on the south-west region of the structure. In general, the second and third layers have poor surface finish. The concrete casting work is unfinished.

F However, if one desires, a modified form of a classical temple can be related to this configuration.

G As already stated in Paragraphs 2 (a) .04.1 to 2 (a) .04.4, the magnitude of the work is such that it could not have been carried out without the use of construction equipments such as water-tankers, cement concrete mixers, concrete vibrators, earth moving equipment etc.”

H There is, therefore, no manner of doubt that substantial work, indeed very substantial work, involving tonnes of cement and concrete deployed

with the help of constructional machinery was carried on at the site. The photographs produced by the complainant— which are not disputed— indicate the gathering of workers. A mere perusal of the photographs justifies an inference that the large work force at the site does not consist of mere Sadhus but justifies the inference that professional workmen had been deployed at the site.

12. We must, however, indicate that the report of the Expert Committee headed by Sri S. Rai, Registrar General, was of the month of August, 1992. But the significance of the report as to the nature and extent of work and whether it could be related to the month of July is determined by the fact that on Uttar Pradesh Govt.'s own admission the work had stopped on 26th July, 1992. It is, therefore, permissible to relate the factual state of construction indicated in the Expert Committee's Report to what must be presumed to have been carried out in the month of July, 1992 itself. We have no hesitation in finding that there was massive work undertaken and executed on the land in violation of the Court's orders.

13. The next question is whether these activities were carried on by a congregation of Sadhus at the site and not by the State Govt. and despite Government's efforts. Apart from a glib suggestion that any attempt to prevent the work would have created a violent situation endangering the safety of the 'Ram Janam Bhumi-Babri Masjid structure' itself, nothing is indicated as to what was sought to be done at all to prevent constructional material coming in. There is no mention in any of the affidavits of any of the officers as to what reasonable measures the Government took to prevent the inflow of constructional material such as large quantities of cement, mortar, sand, constructional equipment, water-tankers etc. that were necessary for the work. The report of the Expert Committee has indicated that constructional machinery was indispensable having regard to the nature and magnitude of the work carried out. While it is understandable that the prevention of the gathering of Sadhus might have created some resentment, it is un-understandable why large quantities of building materials were allowed to be brought on the land unless it be— and that must be the reasonable presumption— that the Government itself was not too anxious to prevent it. It is not merely positive acts of violation but also surreptitious and indirect aids to circumvention and violation of the orders that are equally impermissible. If reasonable steps are not taken to prevent the violation of the orders of the Court, Government cannot be heard to say that violation of the orders were at the instance of others. The presumption is that the Government intended not to take such preventive steps. In the facts and circumstances of the case, we are unable to persuade

A ourselves to the view that the Government was helpless and the situation that had developed was in spite of all reasonable steps taken by the Government. Indeed there is no indication that the Government bestirred itself to take any steps, reasonable or otherwise, to prevent large scale building material getting into the site. The Chief Minister having given a solemn assurance to the National Integration Council and permitted the

B terms of that assurance to be incorporated at his own undertaking to this Court and allowed an order to be passed in those terms cannot absolve himself of the responsibility unless he placed before the Court sufficient material which would justify that he had taken all reasonable steps and precautions to prevent the occurrence. Indeed, if such reasonable steps had been taken he could not be faulted merely because he did not do the best by

C the standards of others. In this case, we find no explanation at all apart from the fact that the Sadhus had congregated in that place in large number, as to what steps the Government took to prevent the constructional equipment from getting into site. If any reasonable effort had been made and evidence of that placed before Court, it might have been possible for the Court to assess the situation in the light of that explanation to find out whether such steps had been taken. In the absence, we are constrained to hold that the

D Government failed to take steps to prevent the grossest violation of the order of this Court. We record a finding accordingly.

E 14. The last question is whether the undertaking furnished by the Chief Minister was a personal undertaking or was on behalf of the State of U.P. It was both.

F There is no immunity for any authority of Government, if a personal element is shown in the act of disobedience of the order of the Court, from the consequence of an order of the Court. Even in England where the maxim 'Crown can do no wrong' has had its influence, a distinction is made between the Crown as such and the Executive.

G In a recent pronouncement of far reaching impact the House of Lords in '*In re M. v. Home Office*', (1994) 1 AC 377, observed (as per Lord Templeman) :-

H "My Lords Parliament makes the law, the executive carry the law into effect and judiciary enforce the law. The expression "the Crown" has two meanings; namely the monarch and the executive. In the 17th century Parliament established its supremacy over the Crown as monarch, over the executive and over the judiciary. Parliamentary

supremacy over the Crown as monarch stems from the fact that the monarch must accept the advice of a Prime Minister who is supported by a majority of Parliament. Parliamentary supremacy over the Crown as executive stems from the fact that Parliament maintains in office the Prime Minister who appoints the ministers in charge of the executive. Parliamentary supremacy over the judiciary is only exercisable by statute. The judiciary enforce the law against individuals, against institutions and against the executive. The judges cannot enforce the law against the Crown as monarch because the Crown as monarch can do no wrong but judges enforce the law against the Crown as executive and against the individuals who from time to time represent the Crown. A litigant complaining of a breach of the law by the executive can sue the Crown as executive bringing his action against the minister who is responsible for the department of state involved, in the present case the Secretary of State for Home Affairs. To enforce the law the courts have power to grant remedies including injunctions against a minister in his official capacity.

If the minister has personally broken the law, the litigant can sue the minister, in this case Mr. Kenneth Baker, in his personal capacity. For the purpose of enforcing the law against all persons and institutions, including ministers in their official capacity and in their personal capacity, the courts are armed with coercive powers exercisable in proceedings for contempt of court."

"My Lords, the argument that there is no power to enforce the law by injunction or contempt proceedings against a minister in his official capacity would, if upheld, establish the proposition that the executive obey the law as a matter of grace and not as a matter of necessity, a proposition which would reverse the result of the Civil War. For the reasons given by my noble and learned friend, Lord Woolf, and on principle, I am satisfied that injunctions and contempt proceedings may be brought against the minister in his official capacity and that in the present case the Home Office for which the Secretary of State was responsible was in contempt."

A However, in that case it was found as a matter of fact that there was no personal element involved in the violation at the instance of the Home Secretary, Mr. Baker. Therefore, Lord Templeman observed :-

B “I am also satisfied that Mr. Baker was throughout acting in his official capacity, on advice which he was entitled to accept and under a mistaken view as to the law. In these circumstances I do not consider that Mr. Baker personally was guilty of contempt.”

In the leading speech Lord Woolf said :-

C “This was the first time that a minister of the Crown had been found to be in contempt by a court. The finding of contempt was made for not complying with an injunction granted by Garland J. ordering M., who had made a claim for asylum, which was rejected by the Home Office, to be returned to this country.”

D “Nolan, L.J., at p. 311, considered that the fact that proceedings for contempt are “essentially personal and punitive” meant that it was not open to a court, as a matter of law, to make a finding of contempt against the Home Office or the Home Secretary. While contempt proceedings usually have these characteristics and contempt proceedings against a government department or a minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequester the assets of the Crown or a government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a government department or minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition an order for costs could be made to underline the significance of a contempt. A purpose of the courts’ powers to make findings of contempt is to ensure that the orders of the court are obeyed. This jurisdiction is required that the orders of the court are obeyed. This jurisdiction is required to be coextensive with the courts’ jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides.”

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“Normally it will be more appropriate to make the order against the office which a minister holds where the order which has been breached has been made against that office since members of the department concerned will almost certainly be involved and investigation as to the part played by individuals is likely to be at least extremely difficult, if not impossible, unless privilege is waived (as commendably happened in this case). In addition the object of the exercise is not so much to punish an individual as to vindicate the rule of law by a finding of contempt. This can be achieved equally by a declaratory finding of the court as to the contempt against the minister as representing the department. By making the finding against the minister in his official capacity the court will be indicating that it is the department for which the minister is responsible which has been guilty of contempt. The minister himself may or may not have been personally guilty of contempt. The position so far as he is personally concerned would be the equivalent of that which needs to exist for the court to give relief against the minister in proceedings for judicial review.”

“To draw a distinction between his two personalities would be unduly technical. While he was Home Secretary the order was one binding upon him personally and one for the compliance with which he as the head of the department was personally responsible.”

In the *State of Bihar v. Rani Sonabati Kumari*, AIR (1961) SC 221 this Court approved the following view of Chakravarti, C.J., in AIR 1952 Cal. 919 :

“I do not say that in fit cases a writ for contempt may not be asked for against a corporation itself, or against a Government. In what form, in such a case, any penal order, if considered necessary, is to be passed and how it is to be enforced are different matters which do not call for decision in this case. In England, there is a specific rule providing for sequestration of the corporate property of the party concerned, where such party is a corporation. I am not aware of any similar rule obtaining in this country, but I do not consider it impossible that in a fit case a fine may be imposed and it may be realised by methods analogous to

A *sequestration which would be a distress warrant directed against the properties of the Government or the Corporation.”*

(emphasis supplied)

B The State Government is, therefore, liable in contempt. A Minister or Officer of Government is also either in his official capacity or if there is a personal element contributing to contempt, in his personal capacity, liable in contempt.

C 15. We find that the undertaking given by Sri Kalyan Singh was both in his personal capacity and on behalf of his Government. There has been a flagrant breach of that undertaking. There has been wilful disobedience of the order.

D 16. It is unhappy that a leader of a political party and Chief Minister has to be convicted of an offence of Contempt of Court. But it has to be done to uphold the majesty of law. We convict him of the offence of contempt of Court. Since the contempt raises larger issues which affect the very foundation of the secular fabric of our nation, we also sentence him to a token imprisonment of one day. We also sentence him to pay a fine of Rs. 2,000. The fine shall be paid within a period of two months. For the sentence of imprisonment a warrant will issue.

E The contempt petitions are partly disposed of accordingly.

A.G.

Petitions partly disposed of.