

1994 ORDER IN CONTEXT OF ACQUISITION, SAYS TOP COURT

Relevant for: Indian Polity & Constitution | Topic: Judiciary: Structure, Organisation & Functioning

Ground zero: The main litigants in the Babri Masjid-Ram Janmabhoomi case interacting with the media in Ayodhya on Thursday. PTI

Speaking for the majority judgement of himself and the Chief Justice on the issue of referring the question “if a mosque as a place of prayer is an essential part of Islam”, in the Ramjanmabhoomi-Babri Masjid appeals, to a seven-judge Bench, Justice Ashok Bhushan said references cannot be made to a larger Bench merely because of “questionable observations” made in an earlier judgment.

Such observations cannot be treated as “governing factors” for a reference, he said.

Justice Bhushan said the statement made in the 1994 Faruqui verdict was in the context of whether the mosque, which was acquired by the Ayodhya Act of 1993, had immunity from acquisition.

The statement meant that no place of worship, be it a temple, church or mosque, is immune from acquisition. It merely wanted to convey that mosques had “no special immunity from acquisition”. The context had nothing to do with the essentiality of the practice of offering prayers or *namaz* in a mosque, he said.

Acquisition, Justice Bhushan observed, is a sovereign power. The power of acquisition is available for a mosque like any other place of worship. Places of worship of all religions are liable to be acquired by the government under the Doctrine of Eminent Domain.

Senior advocate Rajeev Dhavan, for the Muslims appellants, had argued that the observation in the Ismail Farooqui judgment has affected the status of mosques in Islam. The majority view also dismissed Mr Dhavan’s exception to the observation made in the Faruqui judgment that Ayodhya, being the place of birth of Lord Rama, has “particular significance”.

“We have observed above that phrase ‘particular significance’ was used (in the Faruqui verdict) only in context of immunity from acquisition. What the court held was that if a religious place has a particular significance, the acquisition of it violates the right of religion under Articles 25 and 26. Hence the said place of worship has immunity from acquisition,” Justice Bhushan explained.

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