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WA-2782-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 7th OF OCTOBER, 2025

WRIT APPEAL No. 2782 of 2025

MOHAMMED TAIYAB AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Syed Ashhar Ali Warsi, learned counsel for the appellants.

*Shri Anand Soni, learned Additional Advocate General, along with
Shri Shrey Raj Saxena, learned Deputy Advocate General for the
respondents / State.*

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ORDER

Per. Justice Vivek Rusia

The appellants/petitioners have filed the present appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005 challenging the order dated 04.09.2025 passed by the Writ Court, whereby Writ Petition No. 1515 of 2025 has been dismissed.

02. According to the petitioners, they are the local residents of Ujjain and used to offer *namaz* in Takiya Masjid situated at Surveys No.2324, 2325, 2326, 2327, 2328 and 2329 of Revenue Circle - 3, Tehsil - Ujjain. According to the petitioners, the said Masjid was established around 200 years ago and declared as the Waqf property by way of publication in



the Official Gazette Notification dated 13.12.1985.

03. Admittedly, in order to expand the parking space of Mahakal Lok Parishar, Ujjain, respondents No.1 to 4 had initiated land acquisition proceedings. The petitioners came to know that after passing of the award, the compensation had been distributed to the encroachers. After acquisition of the land on which the Masjid was situated, the respondents demolished the Masjid on 11.01.2025.

04. Being aggrieved by the said action of demolition of the Masjid, the petitioners have approached the Writ Court seeking direction to the respondents for reconstruction of the said Masjid and initiation of enquiry against respondents No. 3 & 4.

05. After notice, the respondents have filed a reply to the writ petition by contending that various writ petitions filed by the acutely affected persons claiming themselves to be in occupation and possession had been dismissed by the Writ Court. Thereafter, one of the Writ Appeal No. 117 of 2025 has also been dismissed. The land in question was acquired after following due process of law, thereafter, compensations have been paid and all the properties are now vested with the State Government. Hence, there cannot be any illegality in demolishing the Masjid to make the land vacant for the purpose of expansion of the parking area. The petitioners have no locus to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

06. Vide order dated 04.09.2025, the Writ Court has dismissed the writ petition only on the ground that acquisition proceedings had attained



finality and the civil suit has been instituted by the Waqf Board against the State Government claiming the right to receive the compensation. Hence, the present writ appeal is before this Court.

07. Mr Warsi learned counsel for the appellants/petitioners submits that in view of the law laid down by the Apex Court in the case of *Guruvayoor Devaswom Managing Committee & Others v/s C.K. Rajan & Others reported in (2003) 7 SCC 546*, the petitioners, being devotees, have the right to file a writ petition for reconstruction of the Masjid where they used to offer *namaz*. The action of the respondents amounts to infringement and violation of religious rights as guaranteed under Articles 25 & 26 of the Constitution of India. It is further submitted that it is settled law that once any property is declared as Waqf property, it remains Waqf property forever, therefore, the same has wrongly been acquired by the State Government.

08. Mr. Anand Soni, learned Additional Advocate General for the respondents/State refutes that acquisition proceedings had attained finality. Some of the residents of Takiya Masjid, Nizamuddin Colony had approached the Writ Court challenging the validity of the awards dated 12.03.2024 and 10.06.2024 by way of various writ petitions. Vide common order dated 09.12.2024, all the writ petitions have been dismissed. Thereafter, they approached the Division Bench by filing W.A. No.117 of 2025, which has also been dismissed. Thereafter, four more writ petitions i.e. W.P. Nos.24591 of 2024, 24668 of 2024, 24713 of 2024 & 34440 of 2024, have been dismissed. It is further submitted that the M.P. Waqf Board had already filed a civil suit under Section 83(2) of the Waqf Act, 1995, before the



Madhya Pradesh State Waqf Tribunal, Bhopal claiming title over the land in question as well as the right to get the compensation.

09. Mr Anand Soni, learned Additional Advocate General places reliance upon a judgement delivered by the Division Bench of the High Court of Allahabad in the case of *Mohammad Ali Khan v/s The Special Land Acquisition Officer, Lucknow Nagar Mahapalika, Lucknow & Others*, reported in 1978 SCC OnLine All 948, in which it is held that *a person may go to a particular mosque to offer prayers if it exists; he may go to another mosque if the one in which he offered prayer earlier ceased to exist, or he may offer prayers even in his house or elsewhere. After the acquisition of the property, the right to use that property for the purpose of offering prayers may be lost, but that does not militate against the guarantee contained in Article 25 of the Constitution of India which is a right of a person to practice his religion in his house or elsewhere.* Therefore, the petitioners have no locus to file a writ petition as well as a writ appeal.

10. We have heard the learned counsel for the parties at length and perused the writ petition as well as writ appeal.

11. The petitioners are seeking relief of reconstruction of the Masjid and enquiry against the respondents. Admittedly, Masjid and the land have been acquired by following due process of law. The Land Acquisition Officer had awarded the compensation, distributed it to a number of persons who were in possession and dismantled the Masjid. The M.P. Waqf Board, which is claiming title over the property had already approached the M.P. Waqf Tribunal. Although the petitioners are challenging the acquisition



proceedings, but not seeking quashment of the same in the relief clause, therefore, without seeking relief of quashment of the acquisition proceedings and award, the relief of restoration of the property and the consequential relief of construction and possession cannot be granted.

12. We are in full agreement with the view taken by the Allahabad High Court in the judgement delivered in the case of *Mohammad Ali Khan (supra)* The relevant paragraphs – 8, 9, 10 & 11 are reproduced below:-

"8. The contention of the learned counsel is that the petitioner has a right to practice religion in the mosque and hence the same cannot be the subject-matter of acquisition. We are unable to accept the contention as the guarantee under Clause (1) of Article 25 itself makes the freedom subject to other provisions of part three. Article 31 which provides for acquisition of land itself exists in part three. Article 25 will, therefore, be subject to Article 31 and the freedom guaranteed in Article 25 will not be sufficient to take away the right of the State to acquire property if the acquisition is lawfully made.

9. Further, the profession, practice and propagation of religion guaranteed in Article 25 is a personal right which has to be exercised by the individual. It has no nexus with the place or territory where it has to be exercised. A person may go to a particular mosque to offer prayers if it exists, he may go to another mosque if the one in which he offered prayer earlier ceased to exist or he may offer prayers even in his house or elsewhere. Hence, the acquisition of land on which a mosque may exist cannot be held to deprive him of his right to freely practise the religion. A free practice of religion has the idea of practising it anywhere and not its practice in any particular place. After the acquisition of the property the right to use that property for the purpose of offering prayers may be lost, but that does not militate against the guarantee contained in Article 25 of the Constitution.

10. To test the argument about Article 25, we may consider the right of the person to practise his religion in his house or elsewhere As the prayers can be offered anywhere on earth and a man may be offering prayers in his own house or at some remote place, the right cannot be deemed reasonably to mean that no such place can be acquired. The only reasonable interpretation of Article 25 can be that no law can prohibit the profession, practice



or propagation of religion. The law of acquisition cannot be held to be invalid as that relates to land and, not the individual's right to profess, practise or propagate religion. As the right to practise religion has no nexus with any particular place that right cannot be deemed infringed by acquisition of any particular piece of land which is used as a mosque.

11. As regards the graveyard, even though the land is deemed sacred and Waqf, its acquisition cannot be held to take away the right of any living person to profess, practise or propagate religion. The freedom enunciated in Article 25 is a personal freedom. It is a freedom which a person can claim for his personal exercise at will; it is not a freedom guaranteeing the preservation of the graves where bodies of some others lie."

13. In view of the above discussion, we are of the considered opinion that the Writ Court has rightly dismissed the writ petition. The petitioners have no locus to seek reconstruction of the Masjid. We do not find any ground to interfere with the order passed by the Writ Court.

14. In view of the above, Writ Appeal stands dismissed. No order as to costs.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

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