IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3023 of 2003

With

CIVIL APPLICATION No. 6115 of 2004

In SPECIAL CIVIL APPLICATION No. 3023 of 2003

For Approval and Signature:

HONOURABLE THE ACTING CHIEF JUSTICE MR.BHASKAR BHATTACHARYA

and
HONOURABLE MR.JUSTICE J.B.PARDIWALA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made there under ?

5 Whether it is to be circulated to the civil judge ?

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I R C G - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR YH MUCHCHALA, Sr. Counsel with MR MA KHARADI & MR MTM HAKIM for Petitioner(s) : 1 - 2.
MR PK JANI GOVERNMENT PLEADER with MR NEERAJ SONI AGP for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1,

MR ANSHIN H DESAI for Respondent(s) : 3,
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CORAM : HONOURABLE THE ACTING CHIEF JUSTICE
MR.BHASKAR BHATTACHARYA
and
HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 08/02/2012

CAV JUDGMENT

(Per : HONOURABLE THE ACTING CHIEF JUSTICE MR.BHASKAR BHATTACHARYA)

1. By this public interest litigation, the writ-petitioners, a public charitable trust and its Administrator of the Legal Cell, have prayed for issue of appropriate writ, order or direction directing the State-respondents to make detailed survey of the mosques, dargahs, graveyards, khankahs and other religious places and institutions desecrated, damaged and /or destroyed during the period of communal riot in this State in the year 2002 under the supervision and guidance of this Court and for immediate repair and restoration of those within specified time limit and to further direct the State Government to suitably and adequately re-compensate the trusts and institutions of which the religious places and institutions have been desecrated, defiled, damaged and/or destroyed.

2. The case made out by the petitioners may be summed up thus:-

1. During the period of February 27 to end of April 2002, the communal riots had taken such a grave proportion that it was not possible for the persons belonging to minority community and who were in charge of the specific religious places/institutions to lodge complaint against the miscreants. However, in some cases, complaints had been filed. At some

places, attempts were made to file complaints but they could not get those registered. The religious places/institutions in large number had been damaged and or destroyed during the aforesaid period. This fact is noted and recognized by various Commissions including the Human Rights Commission and the National Minority Commission. The religious institutions and places of worship had been targeted and destroyed not only in urban areas, but also in rural areas in remote villages. The persons who are the beneficiaries of such religious institutions and the persons who are in charge of management of such institutions are mostly belonging to socio-economically disadvantaged class of Society. They are poor, illiterate and ignorant people. They are not aware of their constitutional and other statutory rights. Even if they are aware, they are not in a sound socio-economic position to seek remedy or measures either by filing the petition or through any other mode.

2. During the period of riots, the State machinery failed to maintain law and order and to protect the life and property of citizens. At times, in several areas, it appeared that the person in charge of law and order were in a helpless condition and the situation was beyond their control. It is a fact noticed by various Commissions, eminent citizens and NGOs that mob of thousands of people moved from place to place and caused unprecedented destruction. The petitioners craved leave to refer to various reports, such as mentioned by Human Rights Commission, Minority Commission Report and other reports touching upon subject and annexed the reports of The National Human Rights Commission.
3. India is a Member of United Nations. The United Nations Declaration on Religious Minorities in its Declaration dated December 18, 1992 has proclaimed the rights of persons belonging to national or ethnic religious and linguistic minority, Article 2 thereof *inter alia* reads as follows :-

"*(1) The persons belonging to national or ethnic, religious, linguistic minorities (hereinafter referred to as persons belonging to minority) have the right to enjoy their own culture, to profess and practice their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination."*

4. This philosophy has been the integral part of our Constitution since the enactment of the Constitution itself and in this country, in consonance with the United Nations Declaration and the International standards, the basic human rights, guaranteed under Constitution and in other laws, are protected and, therefore, the Parliament enacted a special legislation called Protection of Human Rights Act, 1993.

Section 2(d) of the Act defines human rights as under:

"*Human Right" means the rights relating to life, liberty, equality and dignity of the individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India."*

5. It is the Constitutional obligation of the State to respect and protect the human rights of all the citizens. The fundamental rights enumerated hereinabove and particularly guaranteed under Articles 14, 21, 25 and 26 of the Constitution of India are enforceable by the Courts in India and particularly, by the High Court and Supreme Court.
6. The Government of Gujarat issued/declared several schemes like the cash dole, household, rehabilitation of properties and business etc., to the affected persons whose residential houses were damaged and who lost their business. The revenue department issued several resolutions i.e. resolution dated 20.3.2002 bearing number RHL/232002/513/ (5)/S and resolution number RHL/232002/513/S-4 dated 5.3.2002. The

Industries and Mines Department also vide resolution dated 16.3.2002 number RLF/102002/760/CH provided for financial assistance to the communally riots affected industries, shop owners and self-employed persons. However, surprisingly, the Government of Gujarat did not issue any scheme/resolution regarding the reconstruction and repairs of the religious places (mosques). The State Government made discrimination on the issue and simultaneously, forgot that it was not the instances of damage by natural calamity but it was man-made destruction either due to failure / connivance or negligence on the part of the Government.

7. The petitioner No.1 as well as other NGOs like Citizen's council and some independent persons of secular concept made a representation to the State Government through the Chief Secretary of the State and through the Minority Commission also, to take up the responsibility and to rebuild/reconstruct the religious places demolished during the time of riots.
8. Since the State Government has not considered the said representation and has taken a peculiar stand, which is violative of Articles 25 and 26 of the Constitution, the stance of the Government is arbitrary and is therefore violative of Article 14 of the Constitution of India. Hence, the petitioners have no other alternative remedy for redress of the grievance but under Article 226 of the Constitution of India, hence this petition.
9. The “Rule of Law” is the basic feature of our Constitution. The Rule of Law enjoins obligation upon the State to see that all citizens are extended equal protection and equality before law. The Rule of Law also casts obligation upon the State to protect the life and property of all citizens. In case the State either deliberately fails or connives at or itself become an instrument of oppression, it is required to compensate the citizens and see that the Rule of Law is established. Unless religious places of worship, which have been destroyed, are repaired or restored

and the concerned citizens are fully compensated, the State cannot be said to have fulfilled its constitutional obligation. In the scheme of our Constitution, it is the judiciary, which is conferred power and enjoined with the obligation to see that the Rule of Law prevails and the same is established the substance and in its real spirit.

10. Article 14 of the Constitution of India guarantees to all the citizens, equality before and equal protection of laws. The oath that a Minister is required to take as provided under Third Schedule of the Constitution of India *inter-alia* enjoins upon him to "do right to all manner of people in accordance with the Constitution and Law."
11. This expression is not found in the form of any other oath required to be taken by any other constitutional functionary. This is so, because in day-to-day functioning of the Government and in day-to-day life, it is the Minister who is required to implement the law and it is his duty as provided under Article 14 and the oath to be taken by him i.e. he shall extend equity before and equal protection of laws, to all the citizens. On account of the riotous situation, the religious places belonging to minority community having been destroyed, whatever may be the reason, it is the State which could not or did not protect these religious places and institutions of worships. Thus, there is violation of Article 14 of the Constitution of India and the oath taken by the Minister.

2.12. Article 21 of the Constitution of India guarantees to all its citizens the right to life. The Honourable Supreme Court has interpreted this right to mean not only the protection of physical body of the citizens, but according to it, the same is required to be interpreted in meaningful manner, so as to give content to the life. The religious places of worship for citizens are like their day-to-day breathing. For poor and illiterate people, the religious places of worship are like their inner

soul of existence. If the religious places of worship are damaged and destroyed, such fact tantamounts to taking away their life itself. During the aforesaid period of riots, the State Government and its officers failed to protect this basic human right, which is enshrined in fundamental rights in our Constitution.

13. Article 25 of the Constitution of India guarantees the freedom to practice and propagation of religion. The State, as the guardians of all citizens and particularly, that of minority community, is under the Constitutional obligation to see that the religious sentiment of any section of the society is not hurt by organized violence or in any other manner. During the aforesaid period of riots, the fundamental rights of minority community of freedom of conscience and religion as well as freedom to manage their religious affairs (Article 26) have been violated. Whatever may be the reason, the State could not or did not protect these fundamental rights.
14. During the course of riots, the National Human Rights Commission had visited the State of Gujarat. In its report dated April 1, 2002, it has *inter alia* recommended as follows:-

"*The Commission recommends that places of worship that have been destroyed be repaired expeditiously. Assistance should be provided, as appropriate, inter-alia by the State.*"

2.15. The National Minority Commission also visited the State of Gujarat and it has recommended to the State Government to repair and restore all religious places of worships, which have been damaged and or destroyed during the period of riots.

3. The application is contested by the State-respondents by filing several affidavits and the sum and substance of the affidavits are as follows:-

1. No right, much less any fundamental right of the petitioners, is violated by the State. The object of the petition is for two purposes, namely (i) for evolving a particular policy by the State and (ii) for compensating various trusts and institutions owning religious places, which were damaged during riots of 2002. However, in accordance with the well-settled legal position, this Court should not issue any direction since it is not within the domain of this Court to issue direction in a matter like the present one to the State to announce a particular policy and the trusts and institutions owning such religious places are not so weak, poor and unable to come to this Court that the petitioners should represent them.
2. Apart from the present writ-petition, another petition was filed simultaneously being Special Civil Application No.3127 of 2003 on behalf of Citizens for Justice & Peace wherein the main relief sought for from this Court was for issuing direction upon the State Government to give sufficient compensation to the victims as per their applications and to appoint a Monitoring Committee comprising of the petitioner and a retired Judge of the High Court to monitor distribution of compensation to the victims.
3. By an order dated July 8, 2003, this Court desired that the representations of the petitioners of both the writ-petitions should be considered by the Chief Secretary. Accordingly, on July 23, 2003, a meeting of the Committee was convened and the hearing was fixed by the Chief Secretary to hear the representations of both the petitioners referred to above wherein Dr Shakeel Ahmed, petitioner No.2 remained present for and on behalf of the petitioners of this application, whereas Ms Teesta Setalvad and her counsel, Mr Tirmizi, remained present on

behalf of the petitioners in SCA No.3217 of 2003 and represented their case before the Chief Secretary.

3.4. During the course of the aforesaid hearing, it was pointed out to the petitioners that as per the available information, there were complaints about damage caused to approximately 535 religious places and that about 294 religious places there from had already been repaired as on December 31, 2002.

5. Thereafter, further meeting had taken place on January 7, 2004 when petitioner No.2 mentioned that the list of damaged religious places as per his record was not complete and, therefore, it was decided that he would meet the Principal Secretary (Revenue Department) on January 16, 2004. During the said meeting, the modalities for inspection of records were also discussed. Thereafter, in the meeting held on January 16, 2004, between the Principal Secretary (Revenue Department) and the petitioner No.2, it was clarified that it would be in the fitness of things that repair work should be done by the community itself and the repairs to historic monuments would be looked after by the Archaeological Survey of India. As against this, the view of petitioner No.2 was to the effect that the protection of places of worship was the duty of the Government, which the Government had failed to perform, and, therefore, it was advisable to undertake the repair of such religious places by the Government immediately. The said meeting concluded with the observation of the Principal Secretary that his views would be brought to the notice of the Government.

5. The details of the relevant places referred to in Annexure-A of the writ-petition clearly suggests that the main anxiety on the part of the petitioners had been substantially taken care of. It is

true that the State Government has not taken any policy decision to repair the damaged religious places and to reimburse the trusts and the institutions of such religious places for the expenses incurred by them. The institutions, which performed the commendable task of restoration, should not be interested in getting compensation when they had taken up the said task out of their philanthropic zeal and magnanimous attitude. None of the said institutions or trusts has so far come forward before the State Government asserting that it had taken the burden of restoring the religious places with a request for compensation in respect of the expenses incurred by them.

3.7. The petitioners themselves have admitted in paragraph 9 of the writ-petition that the Government had issued or declared several schemes like payment of cash doles, household assistance, and rehabilitation of business etc. for affected persons, whose residential houses were damaged or who lost their business. In fact, the Government primarily tried to take care for the restoration of the normal human life leaving the task of restoration of religious places on the shoulders of the organizations like the petitioners who had on their own come forward to do the same. In view of the aforesaid matter, the sanctity behind the purpose and motive with which the said organization had come forward for restoration of various places should not be allowed to be lost sight of by taking up an adversarial stand which the petitioners appear to have adopted.

8. It appears that the petitioners have heavily relied upon the recommendations made by the National Human Rights Commission. The said report discloses that the State Government accepted its recommendations; however, as regards the modalities involved in its implementation, it was under the active consideration of the Government.

9. The State Government had agreed to repair those damaged religious places for which it was submitted at the material time that the modalities thereof were under active consideration of the State Government. The said matter was taken up for serious consideration on several occasions but it was felt that even after the disastrous earthquake, which had taken place in January 2001,though various religious places were destroyed throughout the State, the Government had not framed any policy to get all those religious places repaired or to enable the charitable trusts or institutions owning such religious places to have reimbursement or compensation for the expenses incurred by them.
10. The State Government felt that it would be in the fitness of things in a secular State to persuade and motivate the trusts or institutions owning such religious places to get those repaired or restored instead of placing the burden upon the State Government and that is why the Government has not framed any policy for such repair work or restoration by the Government itself and has thought fit to concentrate on restoration of normal human life.
11. As far as the recommendations of National Human Rights Commission and Minority Commission are concerned, those are empowered to give recommendations under the relevant Acts. However, one should not lose sight of the fact as to what was the response of the State before the said two authorities. The State Government is very much conscious of its constitutional obligation to respect and protect the human rights of all the citizens and has always been endeavouring to adhere to the said constitutional obligation keeping in mind the definition of "Human Right" given in Section 2(d) of the Protection of Human Rights Act, 1993 and the United Nations Declaration on religious minorities.

12. There is no question of any discrimination inasmuch as various policy decisions taken in the matter of providing relief and rehabilitation to the victims of riots were primarily to take care of restoration of normal human life from several points of view, leaving the task of restoration of religious places on the shoulders of the organizations like the petitioners who had on their own come forward to do the same. The State Government denied that there was failure, connivance, or negligence on the part of the State Government to control the situation during the riots, which broke out as a general reaction from the unfortunate incident of Sabarmati Express at Godhra.
13. There is no question of considering the representation given by the petitioners as stated in paragraphs 10 to 13 of the writ-application. It was denied that any action of the State Government in this behalf was violative of the provisions of Articles 14, 25 and 26 of the Constitution of India. It was also denied that unless the damaged religious places of worship were repaired or restored and the concerned citizens were fully compensated, the State Government failed to perform its constitutional obligation as alleged or otherwise.
14. The petitioners are trying to confine the case only to those religious properties which are mosques, dargahs, etc. while forgetting that during the course of riots in question, the religious places of worship belonging to other communities were also damaged and/or destroyed and the respondent-State has been consistent in its approach towards such other religious places of worship too.
15. The provisions of Rules 45, 46, 53, 54, 55 and 57 of Chapter II of Bombay Police Manual and the provisions of Sections 295 and 295A of the Indian Penal Code have always been regarded by the State in the rightful earnest. In view of enormity of the problem where violence had spread to unexpected areas of the State, the availability of paramilitary forces was totally

inadequate to meet with the situation and that is how additional forces from the Central Government were called for. However, in view of the fact that there being a constant demand both from public and district administration for additional deployment, all available manpower was put to the best use according to the circumstances and the priority as the given situation demanded.

16. It was denied that State Government was ignoring the issue of mosques inasmuch as if it had come forward to rehabilitate the institutions belonging to minority community, it would lose its position as alleged or otherwise or that the Government was obviously acting in a biased manner or against the principles of the Constitution.

4. An affidavit-in-rejoinder was given on behalf of the petitioners to the aforesaid affidavit and its rejoinder may be summed up thus:-

4.1. The State Government has admitted that approximately 535 places of worship had been damaged in the violence after February 27, 2002 and as per their own survey, though disputed by the writ-petitioners, out of the same, 294 places of worship had been repaired as on December 31, 2002. Therefore, it is an admitted fact that 241 places of worship had remained unattended even according to the survey of the respondents.

4.2. With regard to the respondents' contention that 294 places of worship had been repaired and rehabilitated, no survey-report has been adduced on record in support of such contention. Moreover, the respondents have also failed to identify the repaired and rehabilitated places of worship and thus, the aforesaid contention is a false one. According to the direction given in this matter, although series of meetings were held between the petitioners and respondents No. 1 and 2, all those meetings remained unfruitful since the respondents never made any serious efforts for coming out with a policy decision to

provide financial assistance and/or compensation for damaged, desecrated and destroyed places of worship. From the affidavit of the State Government, it is apparent that the Government has not taken any policy decision to repair the damaged religious places or to reimburse the trusts or institutions of the religious places with the expenses incurred by them.

4.3. The respondents made futile efforts to wriggle out of all the assurances given to the National Human Rights Commission. The assurances given to the National Human Rights Commission by the State Government to the effect that the repairs and restoration of the places of worship shall be done through organizations like that of the petitioners are nowhere reflected either in the response by the State, National Human Rights Commission and/or actions taken by the respondents. It was denied that the State persuaded or motivated the trusts or institutions to get the damaged religious places repaired and restored instead of being done by the State Government. No efforts had been undertaken by the State or the respondents to repair those places of worship.

4.4. Since repair and restoration of places of worship is also one of the most important aspects in restoration of normal human life and the respondents having completely ignored the same, the restoration of normal human life could never be achieved. It appears that attempts have been made to justify the heinous actions by contending that the same were reaction of the incident of Sabarmati Express at Godhra and that too, by State of Gujarat under the Constitution of Republican State. It is significant that no investigation has been made or prosecution for the same has been commenced and no conviction has also resulted.

4.5. The contention that numerous religious places belonging to other communities were also damaged, destroyed and those were also required to be repaired in the same fashion, does not justify non-

payment of compensation to the petitioners since the damage caused to the said community, when compared to the one caused to the community for which issues have been agitated in the writ-petition, is minuscule.

5. It appears that subsequently further affidavit was given on behalf of the State Government for putting on record certain important aspects involved in the writ-application. Those are epitomized thus:-

5.1. The claim of the petitioners proceeded on the premise that there was complete breakdown of law and order machinery at the material time in the State and therefore, the State Government should come out with the policy to repair and restore the religious places since the State has accepted the recommendation of the Human Rights Commission in principle that places of worship that have been destroyed should be repaired expeditiously. But the aforesaid fact is not factually correct inasmuch as in its response dated June 30, 2002 to National Human Rights Commission, the State Government has categorically stated as under :-

> "*As indicated earlier, the State has not failed in fulfilling its constitutional obligation of protecting the lives, liberty and dignity of all its people. The State did its best with available resources to protect the lives of its people. For every incident of violence there have been innumerable instances of lives saved, property saved and protected by the State administration.*"

5.2. It was reiterated that the State Government had undoubtedly agreed in principle for getting the damaged religious places repaired and restored, but had never agreed that the State Government itself should undertake the said task. At the same time, it was equally true that the State Government had tried to persuade various trusts and institutions owning such religious places and institutions to get those repaired and/or restored instead of placing the burden upon the State

Government for carrying out such task. In view of such fact, at present, at the time of filing the said further affidavit, out of 572 religious places, which were damaged throughout the State, only 37 religious places were left to be taken care of.

5.3. The State has not framed any policy for such restoration and/or repair by the Government itself since the State Government had never undertaken before the National Human Rights Commission to do so by itself.

6. Pursuant to order dated December 28, 2010 passed in this matter, the State Government had given further affidavit and stated that after considering all the aspects of the matter, it had taken the decision not to provide any financial aid to the religious places affected or in any way damaged in view of Godhra incident or post-Godhra incident.

7. By the above order dated December 28, 2010, a Division Bench of this Court, on the request of the learned counsel for the State, adjourned the matter to enable the State to file affidavit in terms of the earlier order and to bring on record the scheme, if any, framed by the Central or State Government for rehabilitation of the riot victims or those who have been affected by riots.

8. Subsequently, when the matter was placed for further hearing before the Division Bench on March 21, 2011, the Division Bench allowed the petitioner to implead the Union of India through the Secretary, Ministry of Home Affairs , New Delhi as party respondent No.3 to the writ-petition for the purpose of taking instruction as to whether the report of the Human Rights Commission stated in the said order had been placed before the House of Parliament or any Memorandum of action or proposed action has been prepared by the Central Government. The Court further directed the State to file specific reply whether the report in question submitted by the National Human Rights Commission was sent to the State Government and

it had placed the same before the State Legislature and whether any memorandum of action or proposed action had been prepared by the State Government or not.

9. Pursuant to the said order, the State Government gave a further affidavit on April 22, 2011 and the sum and substance of the affidavit may be enumerated below :-

9.1. The annual report as contemplated under the provisions of Section 20 of the Protection of Human Rights Act, 1993 to be sent by the National Human Rights Commission was being verified of it having been received by the State Government and the details about the report having been received or not was being checked. According to the said affidavit, a letter of request is being sent to all concerned Departments of the State to get the details in this regard.

9.2. In view of the above, in absence of any annual report as it stood then, the authority had not placed the same before the State Assembly. However, on receipt of the report or it being made available, the same would be placed before the State Assembly.

9.3. The State has not taken any action or any memorandum of action or proposed action based on report in absence of the report in question.

9.4. However, in Kalavad Taluka of Jamnagar District, applications were received to provide financial aid and assistance to restore and/ or reconstruct, renovate religious places destroyed because of earthquake. The State Government had decided that even for the damage of any kind in any religious places because of natural calamity, the amount which was sought for from the State Government was not required to be given.

9.5. Even the Central Government, who had provided financial assistance by way of ex-gratia assistance towards relief and rehabilitation programme, has not made any provision for payment of any amount to restore, reconstruct, or renovate religious places.

10. Pursuant to the aforesaid order as stated earlier, respondent No.3 has, however, given an affidavit-in-reply and affidavit given by the said respondent may be summed up thus :-

10.1. The annual report of National Human Rights Commission for the year 2002-03 along with the Memorandum of Action taken was placed in the Lok Sabha / Rajya Sabha on December 21, 2004 and December 22, 2004 respectively. In Chapter 15 of the above stated annual report, the National Human Rights Commission had given summary of principal recommendations and observations. The special recommendations relating to Godhra riots of Gujarat were made therein and the Home Ministry had indicated in paragraphs 5 to 10 in the memorandum laid in the Parliament. The relevant extract from the Memorandum of Action contained in the annual report 2002-03 of National Human Rights Commission relating to Godhra riots of Gujarat were also made annexure to the affidavit-in-reply.

10.2. The annual report of National Human Rights Commission for the year 2002-03 was sent to the Chief Secretary, Government of Gujarat Gandhinagar *vide* letter dated January 20, 2005 being No.Z-16022/1/2005-Estt/288-322 and the State Government was requested to take necessary action for placing the report before the State Legislature along with the Memorandum of Action taken and non-acceptance of the recommendations. A copy of which communication was also annexed to the affidavit.

11. Mr YH Muchchala, the learned Senior Advocate appearing on behalf of the petitioners, on consideration of the aforesaid materials on record vehemently contended before us that it is apparent that the annual report of

National Human Rights Commission on Godhra riots had already been received by the State Government, but till the date of hearing, the same has not been placed before the State Legislative Assembly and at the same time, no action has also been taken on the basis of such report. According to Mr Muchchala, it is apparent from the aforesaid fact that there was deliberate inaction on the part of the State Government in not taking any action on the basis of the report of the National Human Rights Commission and till date, no action has yet been taken. Mr. Muchchala further contends that the guiding principle adopted by the State Government that it was under no obligation to restore the damaged or desecrated religious places of worship by way of a policy decision, because, in a secular State like India, the Government cannot spend any money from the exchequer for that purpose, is preposterous one. Mr Muchchala contends that since "law and order" is a subject of the State Government and for the failure on the part of the State Government to protect the places of worship, those places of worship were damaged, it is the duty of the State Government to repair those and to compensate the trusts or institutions who are in charge of those religious places. According to Mr. Muchchala, the Constitution of India recognizes the right of every citizen to follow his own religion and maintain the place of worship. Therefore, according to him, it is absurd to suggest that the State Government has no duty to protect the places of worship of a citizen of India from the attack of the rioters. Mr Muchchala, therefore, prays for direction upon the State to take appropriate action for the purpose of restoration and for framing a policy so that in future there is no problem for the inaction of the State Government.

12. Mr. Jani, learned Government Pleader appearing on behalf of the State-respondents, has, however, opposed the aforesaid contentions of Mr. Muchchala and contended that the State having taken a policy decision not to spend any public money for restoration of the places of worship, but to divert the money for restoration of residential buildings and the place of business affected by giving more importance to those aspect, this Court

sitting in a jurisdiction under Article 226 of the Constitution of India should not interfere with such policy decision.

13. Mr Jani, however, admits that the annual report and the report of Godhra riots by National Human Rights Commission had been received by his client and that so long it was not placed before the State Legislative Assembly. Mr Jani submits that in the next session of the State Assembly the same would be placed for discussion.

14. Mr Jani further contends that even at the time of earthquake of 2001 although various places of worship were destroyed, by following the same policy decision, the State Government did not spend even a single farthing for restoration of places of worship but gave priority to the places of residence and places of business which, according to the State Government, is of prime importance.

15. Mr Jani, therefore, submits that there was no illegality on the part of the State Government in not taking any decision to restore the places of worship by taking aid of people's money, which would be violative of the provisions contained in Article 27 of the Constitution. Mr Jani further contends that since the incident occurred about ten years ago, this writ-application has lost its utility and importance and by this time all the religious places of worship then damaged having been restored, this writ-application should be dismissed. Mr Jani, emphatically denied that for inaction on the part of the State Government, the places of worship were damaged or desecrated. He, therefore, prays for dismissal of this writ-application.

16. Therefore, the question that arises for determination in this Public Interest Litigation is whether this Court, sitting in a jurisdiction under Article 226 of the Constitution of India, should interfere with the policy decision of the State Government not to spend any public money for repair of the places of worship destroyed during a communal riot which continued for some days.

17. Before answering this question, we make it plain that we are quite conscious of the position of law that if an individual person by committing wrongful act causes any damage to the person or the property of another when such wrongful act amounts to an offence punishable under the law, the person wronged has twofold remedies available under the law- 1) a remedy under the criminal law for the punishment of the person guilty and 2) a civil remedy for compensation.

18. As far as the remedy under the criminal law is concerned, the same should be proceeded with in accordance with the Code of Criminal Procedure depending on the nature of the offence as provided therein; on the other hand, the remedy for obtaining damages under the civil law must be proceeded with by the person wronged at his instance in accordance with law.

19. In the above type of cases, the State has no responsibility to compensate the person wronged for the illegality committed by the wrongdoer unless at the time of committing the offence the person wronged was in the lawful custody of the State. However, the position will be different when due to incidents not arising out of any personal vengeance but solely based on religious beliefs or sentiments, persons belonging to two communities involve in riotous acts and cause destruction of property belonging to the innocent members of the other community.

20. In the latter type of cases, the State Government has, however, a constitutional obligation to take all possible steps to stop such illegal activities lest for its inaction or inadequate action, the life and the liberty of innocent citizens of this country are jeopardized in any way only because they belong to one of the communities of the persons involved in the riot.

21. A conjoined reading of Articles 14, 15, 16, 21, 25 and 26 of the Constitution of India leaves no doubt that a citizen has, subject to the restrictions contained therein, a right to lead a meaningful life based on his faith on any religion and also the right to practise, profess and propagate any religion. He has also the freedom to manage religious affairs and maintain places of worship of his choice. Those Articles have found place in Chapter III of the Constitution enumerating the fundamental rights of a citizen.

22. Thus, the State has a duty to protect those fundamental rights of the citizens conferred by the abovementioned Articles and if by any inaction or inadequate action, which is nothing but inaction, a person suffers for no fault on his part resulting in injury to his life and property, he can approach the High Court under Article 226 of the Constitution for appropriate remedy.

23. If in the above situation, huge numbers of persons have suffered injury for such inaction of the State Government but they are unable to come to Court for various reasonable grounds, a public-spirited person can surely espouse their cause and pray before this Court for appropriate remedy.

24. We, now propose to enter into the merit of this application.

25. From the materials on record, it is not in dispute that on February 27, 2002 a communal riot broke out in the State of Gujarat and the same continued for some days resulting in destruction of residential houses, places of business and religious places of worship. The State Government in

its various affidavits filed before this court has not disputed those incidents. The State Government in its affidavit has admitted that it has spent huge amount of money from public exchequer for rehabilitation of the persons affected by such communal violence. It, however, has contended that the State has taken a policy decision to spend such public money only for restoring the normal situation by restricting such expenditure to repairing of the residential building and the places of business but not to spend any amount for restoration of the places of worship or other religious places.

26. Mr. Jani, the learned Government Pleader appearing for the State-Respondent, in this connection, vehemently contended before us that any expenditure from public exchequer for restoration of the religious places of worship would violate Article 27 of the Constitution of the India and for that reason, the Government has taken such a firm decision. Mr. Jani has further contended that even at the time of the devastating earthquake that affected the people of this State in the early part of the year 2001, the State Government maintained the selfsame principle.

27. By way of alternative submission, Mr. Jani contended that even if there is no prohibition under Article 27 in spending money from Public exchequer, the policy decision taken by the State Government is beyond the scrutiny of this Court in exercise of power conferred under Article 226 of the Constitution of India.

28. In order to appreciate the first branch of the submission of Mr. Jani, indicated above, Article 27 of the Constitution of India is quoted below:

"***27. Freedom as to payment of taxes for promotion of any particular religion.***—*No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for*

the promotion or maintenance of any particular religion or religious denomination."

29. In the case of The Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt reported in AIR 1954 SC 282, a seven-judge-bench of the Supreme Court had occasion to consider the scope of the above Article 27 and in that context the following observations were made:

"What is forbidden by the Article is the specific appropriation of the proceeds of any tax in payment of expenses ***for the promotion or maintenance of any particular religion or religious denomination.*** *The reason underlying this provision is obvious. Ours being a secular State and there being freedom of religion guaranteed by the Constitution both the individuals and to groups, it is against the policy of the Constitution to pay out of public funds any money* ***for the promotion or maintenance of any particular religion or religious denomination.*** *But the object of the contribution under S. 76 of the Madras Act is not the fostering or preservation of the Hindu-religion or any denomination within it. The purpose is to see that religious trusts and institutions, wherever they exist, are properly administered. It is a secular administration of the religious institutions that the legislature seeks to control and the object, as enunciated in the Act, is to ensure that the endowments attached to the religious institutions are properly administered and their income is duly appropriated for the purposes for which they were founded or exist.* ***There is no question of favouring any particular religion or religious denomination in such cases. In our opinion, Art.***

27 of the Constitution is not attracted to the facts of the present case."

(Emphasis supplied by us).

30. If we apply the aforesaid principles to the facts of this case, it will appear that in this case we are not concerned with a question whether the Government is required to impose any tax for the benefit of any particular religion excluding the others. The question before us is whether public money can be lawfully spent for repair of religious places including those of worship, which were destructed for the inaction or inadequate action on the part of the State Administration. It is the specific case of the State Government that due to the said communal riot, the religious places of both the communities have been destructed. Therefore, in our opinion, for the restoration of all the religious places including those of worship irrespective of religion, if the State Government decides to spend money from the public exchequer, such decision will in no way be in conflict with the provision of Article 27. We, thus, find no substance in the aforesaid contention of Mr. Jani.

31. The next question is whether we can lawfully interfere with the policy decision taken by the State Government for not spending public money for restoration of places of worship in this application.

32. At this stage, we should keep on record that in the affidavit before this Court, it is the specific stance of the State Government that it had no negligence or inaction in protecting the life and the property and in

controlling the situation during the riot. According to the State Government, the riot broke out as a general reaction from the unfortunate incident of Sabarmati Express at Godhra.

33. After taking into consideration the enormity of the situation where more than 500 religious places of worship of only one community have been destructed, even if we do not take into consideration the number of such destructed places belonging to other community, the State Government cannot shirk its responsibility by asserting that it had no negligence or inaction in protecting the life and the property of the citizen. According to the affidavit filed by the State, the most of the above places of worship have been repaired and thus, the present application has lost its significance.

34. If the State Government had disclosed the number of place of worship of the other community destroyed during the riot in its affidavit, we could comprehend in a better way the vastness of the damage arising out of the incident. For the reason best known to the State, it has not disclosed such number. However, the facts remain that the anarchy continued unabated for days. When according to the State, the riot broke out *as a general reaction from the unfortunate incident of Sabarmati Express at Godhra* as disclosed in its affidavit, such fact should have been known to the police intelligence and they should have taken appropriate preventive action well in advance.

35. Failure on the part of the police intelligence to gather such *general reaction* in time and to take appropriate timely action definitely come within the expression “negligence of the State” even if we for the sake of argument

accept the defence of the State that the cause of riot was the *"general reaction from the incident of Sabarmati Express".* Similarly, the fact that the riot continued for several days itself suggests lack of appropriate action or adequate action, if not inaction, on the part of the State in handling the situation.

36. Moreover, the fact that the annual report of National Human Rights Commission on this serious incident of violation of human right has not been placed before State Legislative Assembly for discussion is not in dispute. Such inaction is a grave defiance on the part of the State Government of the provisions contained in Section 20 of the Protection of the Human Rights Act, 1993 which is couched in mandatory form. The State Government has not given any explanation in its affidavits as to why the said report was not placed in the State Legislative Assembly in spite of the fact that the same was received at least in the early part of the year 2005.

37. Once we hold that there was inadequate endeavour on the part of the State Government in effectively handling the situation resulting in destruction of more than 500 places of religious worship throughout the State belonging only to the one religious community, we are left with no other alternative, but to conclude that it is the duty of the State Government to restore all those religious places, irrespective of the religion, to its original position as it existed at the time of destruction. If those are already restored, the State Government should compensate the persons in charge of those places of worship by reimbursing the amount already spent by them.

38. We now propose to deal with the last contention of Mr. Jani that this Court should not interfere with the policy decision of the State Government not to spend public money for restoration of the religious places including those of worship.

39. In the case of State of H.P. and another v. Padam Devi and others reported in AIR 2002 SC 2477, the Supreme Court on consideration of the earlier decisions of that Court succinctly answered the question of interference by writ-court in respect of policy decision in the following way:

"*The framing of administrative policy is within the exclusive realm of the executive and its freedom to do so is, as a general rule, not interfered with by Courts* ***unless the policy decision is "demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution.***"

(Emphasis supplied).

40. At this juncture, it will be profitable to refer to the following observations of the Supreme Court in the case of Delhi Development Authority, N.D. and Anr. v. Joint Action Committee, Allottee of SFS Flats and others, reported in AIR 2008 SC 672, where the said court elaborated the above principle with the following observations:

"*Policy decision:*

59. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior Courts may not interfere with the nitty gritties of the policy, or substitute one by the other but it will not be correct to contend that the Court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior Court would not be without jurisdiction as it is subject to judicial review.

60. Broadly, a policy decision is subject to judicial review on the following grounds:

(a) if it is unconstitutional;

(b) if it is dehors the provisions of the Act and the Regulations;

(c) if the delegatee has acted beyond its power of delegation;

(d) if the executive policy is contrary to the statutory or a larger policy."

A three-judge-bench of the Supreme Court, in the meantime, in the case of Union of India and another v. S. B. Vohra and others reported in AIR 2004 SC 1402, made further elaborations on this aspect as quoted below:

"*30. Judicial review is a highly complex and developing subject. It has its roots long back and its scope and extent varies from case to case. It is considered to be the basic feature of the Constitution.* ***The Court in exercise of its power of judicial review would jealously guard the human rights, fundamental rights and the citizens' right of life and liberty as also many non-statutory powers of Governmental bodies as regards their control over property and assets of various kinds which could be expended on building hospitals, roads and the like, or overseas aid,or***

compensating victims of crime *(See for example, R. v. Secretary of State for the Home Department, ex parte Fire Brigades Union (1995) 2 WLR 1.*

31. The Court, however, exercises its power of restraint in relation to interference of policy. In his recent book 'Constitutional Reform in the UK' at page 105, Dawn Oliver commented thus :

"However, this concept of democracy as rights-based with limited governmental power, and in particular of the role of the Courts in a democracy, carries high risks for the Judges - and for the public. Courts may interfere inadvisedly in public administration. The case of Bromley London Borough Council v. Greater London Council ((1983) 1 AC 768, HL) is a classic example. The House of Lords quashed the GLC cheap fares policy as being based on a misreading of the statutory provisions but were accused of themselves misunderstanding transport policy in so doing. The Courts are not experts in policy and public administration - hence Jowell's point that the Courts should not step beyond their institutional capacity (Jowell, 2000). Acceptance of this approach is reflected in the judgments of Laws LJ in International Transport Roth GmbH v Secretary of State for the Home Department ((2002) EWCA Civ 158 (2002) 3 WLR 344) and of Lord Nimmo Smith in Adams v. Lord Advocate (Court of Session, Times 8 August 2002) in which a distinction was drawn between areas where the subject-matter lies within the expertise of the Courts (for instance, criminal justice, including sentencing and detention of individuals) and those which were more appropriate for decision by democratically elected and accountable bodies. If the Courts step outside the area of their institutional competence, Government may react by getting Parliament to legislate to oust the jurisdiction of the

Courts altogether. Such a step would undermine the rule of law. Government and public opinion may come to question the legitimacy of the Judges exercising judicial review against Ministers and thus undermine the authority of the Courts and the rule of law."

32. It is not possible to lay down the standard exhaustively as to in what situation a writ of mandamus will issue and in what situation it will not. ***In other words, exercise of its discretion by the Court will also depend upon the law which governs the field, namely, whether it is a fundamental law or an ordinary law."***

(Emphasis by us).

41. It appears from the affidavit used by the State Government that it has already taken decision to restore the places of residence and the business, which were destroyed during the period of communal riot. Such fact indicates that the State Government has virtually accepted its liability to compensate the affected persons for its failure to protect the residence and the place of business. The aforesaid failure to protect the right of the citizens under Article 21 having prompted the State Government to take decision to compensate the citizens whose fundamental right guaranteed under the Constitution has been impeded, there is no reason why the same failure to protect the right of citizens to freedom of conscience and free profession, practice and propagation of religion as also the freedom to manage religious affairs as protected by Articles 25 and 26 will not enable the persons who are in charge of the religious places including those of worship to get compensation for its restoration.

42. To appreciate the said position in detail, the provisions contained in Articles 25 and 26 of the Constitution are quoted below:

"***25. Freedom of conscience and free profession, practice and propagation of religion.***—*(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.*

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.—*Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—*

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law".

43. In spite of the fact that the above rights are protected as fundamental rights in the Constitution of India, it is preposterous to suggest that the State Government, in spite of its failure to protect such rights, is lawfully entitled to take a policy decision only to restore the places of residence and the business destroyed in the riot but not the religious places including those of worship which are also protected in the same way with that of the place of residence and the place of business.

44. The above policy rather would give a wrong signal to the citizens that for the protection of the religious places including those of worship from the attack of the ruffians, they should take up arms in their own hand because in the event of destruction of those places, no financial help would come from the Government. The above policy will also encourage the religious bigots to destroy the religious and other places of worship of the economically weaker section of the other community for the purpose of establishing their superiority over the others being well conscious that the economically weaker community will not be able to reconstruct the selfsame structure in future from their own resources. The mere fact that the damaged property has already been restored at the cost of the person wronged is of no consequence on the fate of this writ-application because there cannot be any waiver of fundamental right. (Basehor Nath v. Commissioner of Income-tax, Delhi and Rajasthan and another reported in AIR 1959 SC 149). Similarly, the policy decision taken in tackling an incident of earthquake, which is an act of God, cannot be applied in handling a situation arising out of the culpable inaction, inadequate action or negligence on the part of the State Government in protecting the fundamental rights of the citizens guaranteed by our Constitution.

45. In our opinion, the above policy of the State Government taken in defence is one of evading the constitutional responsibility and will bring anarchy in the society, and thus, is detrimental to the establishment of the principles and the tenets of our Constitution.

46. We now propose to deal with the decisions cited by Mr. Jani in this connection.

47. By relying upon the decision of the Supreme Court in the case of Archbishop Raphael Cheenath S. V. D 2 vs. State of Orissa and others, reported in (2009) 17 SCC 87, Mr. Jani contended that in the said case, the State Government, like the one in the present case, took a policy decision not to extend any financial help to the destructed religious places of worship. However, the Supreme Court did not pass any direction by leaving the matter to the discretion of the State Government. According to Mr. Jani, the said decision rather supports his contention that the Court in this type of a matter should not impose its direction upon the State Government to change the policy decision.

48. By going through the said decision, we find that in that case the question specifically raised before us was never the subject matter at that stage. At paragraphs 10 and 11 of the judgment, the Court made the following observations:

"***10.*** *We are told by the counsel for the petitioner that approximately 16 churches have been fully or partly damaged. As regards the damaged churches also the State can have a generous attitude on the matter and assess the damage of those churches or other religious places and render reasonable help to rebuild the same. We hope that the State would create an atmosphere where there shall be complete harmony between the groups of people and the State shall endeavour to have discussions with the various groups and bring about peace and do all possible help to the victims. The existing battalions/police force sent by the Government of India would continue till the end of December 2008.*

11. *The State has also submitted that Fast Track Courts are established to clear the cases arising out of these incidents. Post in the first week of January, 2009."*

49. It is, therefore, clear from the above observations that first, it was an interlocutory order and secondly, no law was laid down therein that the policy taken by the State was justified and should not be interfered with. On the other hand, it appears from the next order passed in that matter on January 5, 2009, which is reported in (2009) 17 SCC 90, that the following direction has been given in paragraph 3 of the judgment:

*"**3.** The learned counsel appearing for the petitioner stated that a large number of churches have been demolished and the State Government is giving meagre amount by way of compensation. Some churches and religious places were in existence which are being destroyed and the State Government is not giving any compensation on the ground that there is some dispute regarding the land.* ***The Government may formulate a scheme regarding these religious places and take appropriate decision."***

(Emphasis given).

50. Thus, by subsequent order, the Supreme Court passed direction for framing a scheme and take appropriate decision. Therefore, the said decision does not help the State Government in any way in contending that such policy decision of the State Government is beyond the judicial scrutiny.

51. In the case of State of Punjab and others vs. Ram Lubhaya Bagga and other reported in AIR 1998 SC 1703, another decision relied upon by Mr. Jani, according to new Government policy, the employees were given free choice to get treatment in any private hospital in India. However, due to financial constraint the reimbursement was allowed to the level of expenditure as per the rate fixed by the Director, Health and Family Welfare for a similar treatment package or actual expenditure whichever is less. The Director, Health and Family Welfare, to finalize the roles of various treatment packages and the principle of fixation of rate and scale under this new policy, constituted a committee of technical experts. In such a case, it was held that the new policy was justified and cannot be held to be violative of Articles 21 or 47 of the Constitution of India and the exclusion of private designated hospital was also not violative of Art. 21. We fail to appreciate how the said decision can be of any help to the State Government to a case where the policy challenged has been found to have violated the fundamental rights of the citizens. Thus, the principles laid down in the above case cannot have any application to the facts of the present case.

52. Lastly, in the case of Nathulal Jain and others vs. State of Rajasthan reported in AIR 1993 Raj 149 before a learned Single Judge of the Rajasthan High Court, a learned Advocate filed a public interest litigation containing the following relief:

"(i) to direct the State Government to pay a minimum compensation of Rs. two lacs per person in respect of all those persons who lost their lives during the course of riots which took place on 24th October, 1990;

(ii) to direct the State Government to pay minimum compensation of Rs. 30,000/- to persons who suffered injuries in the nature of loss of any limb or organ depending upon the gravity of individual suffered or in accord-ance with the principles incorporated under the Railway Accidents "Compensation" Rules, 1990."

53. In the said proceedings, the learned Chief Justice, sitting singly, while dismissing the said writ-application, gave the following reasons for dismissal:

"50. The prayers made by the petitioner in this writ petition in itself show that the petitioner is not specific as to whom the compensation has to be paid whether in case of death or injured permanent or otherwise. After the submissions have been made on behalf of the respondent State, the petitioner came out with the case that there was no doubt after the respondent State placed on record the names of the persons who died and the names of persons who were injured. If the petitioner relies on that information, he should have said somewhere either in the rejoinder or by way of applying for amendment that the petitioner is bound by what has been said by the Government in its counter and moreover he should have then also made his position clear whether would depend upon the enquiry made by the State in the matter of the persons whose lives were lost and who suffered injuries.

51. The petitioner cannot claim any compensation from the Government qua the parties from whom he holds no brief and right to realise on their behalf. The parties may wriggle out and may at any time say that the petitioner was

no one to espouse their case. It is by now very commonly known that even in a compromise made by the Government in Bhopal Gas Tragedy case the compromise was challenged though later it was upheld by the Hon'ble Supreme Court but still some part of the compromise relating to the criminal offence committed by the Union Carbide was taken out of the performance of the compromise.

52. For the reasons given above the writ petition fails and is dismissed."

54. We are unable to accept the said decision as a precedent in support of a proposition of law that the policy decisions of the State not to give compensation to the victimized religious places including those of worship by restricting the compensation only to the places of business and residences involved in the riot was not violative of the fundamental right to maintain and run the religious and other places of worship and to protect from being attacked by people of different community.

55. We, therefore, find that the decisions cited by Mr. Jani do not help his client in any way.

56. On consideration of the entire materials on record we, therefore, hold that for the inability or negligence on the part of the State Administration, the religious and other places of worships in this State having been destroyed during the riot of the year 2002 mentioned above, the policy adopted by the State Government, not to spend any money from public

exchequer for the restoration of the religious places which were destructed during the said period, but restricting the compensation only to the places of residence and the business, is violative of the fundamental right guaranteed under Articles 14, 25 and 26 of the Constitution of India.

57. We further find that no explanation has been given by the State Government for not placing the annual and other reports given by the National Human Rights Commission on the incident before the State Legislative Assembly till today in spite of receiving the same in the early part of the year 2005 and such grave lapse on the part of the State Government amounts to clear violation of Section 20 of the Protection of Human Rights Act, 1993.

58. We, accordingly, pass direction upon the State Government to give compensation in favour of the persons in charge of all the religious places including those of worship, which were damaged during the communal riot of the year 2002 for restoration to the original position, as those existed on the date of destruction.

59. We find that during the long pendency of this litigation, many of those places of worship have been repaired. Nevertheless, the persons in charge of those places would be entitled to get reimbursement of the amount spent for restoration of those places by production of evidence of expenditure incurred by them for the above purpose, as there is no waiver of fundamental right. We, however, make it clear that if at the time of repair, further additional construction has been made in excess of the one existed at the time of

damage, for such additional construction, no amount should be payable by the State Government.

60. For implementation of our order, we appoint all the Principal District Judges of the various districts in this State and in the area under the jurisdiction of the City Civil Court, the Principal Judge, City Civil Court as the Special Officers for deciding the amount of compensation for the restoration of those religious and places of worship situated within the territorial limit of their respective court.

61. The aggrieved persons should lodge their respective claim with those Special Officers within two months from today supported by the documentary evidence they propose to rely in support of their claim of damages. It is needless to mention that they will be also entitled to give oral evidence to prove the exact position of the structure as it stood at the time of causing damage. The State Government will also be entitled to give written statement and oral and documentary evidence in support of its defence. Such written statement must be filed within one month from the service of the claim-application. The learned Special Officers on consideration of the entire materials on record will decide the matters and fix the amount of disbursement, if proved to have been incurred by them. In the cases where the religious places including those of worship are still lying in un-repaired condition or partly repaired condition, the learned Special Officer will pass not only the order of payment of the amount already spent by them for such repair, but also pass necessary order for repair or the balance amount of repair, as the case may be, to be made by the State Government.

62. The final order should be passed by the learned Special Officers within six months of lodging of the claim and such decision should be sent to this Court for confirmation within fifteen days of passing decisions.

63. The State Government, it is needless to mention, would be entitled to realize the amount to be spent for such repair from the persons who would be found actually guilty of destruction of those religious places by the competent Criminal Court in this regard.

64. We, keep this public interest litigation pending for the scrutiny of the final decisions of the learned Special Officers on compensation or repair, as the case may be, on merit.

BHASKAR BHATTACHARYA, ACTING C.J

J. B. PARDIWALA, J.

ITEM NO.40 COURT NO.3 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Civil) No.15730/2012
(From the judgment and order dated 08/02/2012 in SCA
No.3023/2003 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

STATE OF GUJARAT
Petitioner(s)

VERSUS

I.R.C.G.& ANR
Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment and exemption from filing O.T. and with prayer for interim relief and office report)

Date: 11/05/2012 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE D.K. JAIN
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s) Mr. Mukul Rohtagi, Sr. Adv.
Mr. Tushar Mehta, AAG
Mr. Prakash Jani, Adv.
Ms. Hemantika Wahi, Adv.
Ms. Jesal, Adv.
Mr. S. Panda, Adv.

For Respondent(s) Mr. Harish N Salve, Sr. Adv.
Mr. Huzefa Ahmadi, Adv.
Mr. Ejaz Maqbool, Adv.
Mr. Mrigank Prabhakar, Adv.
Ms. Garima Kapoor, Adv.
Mr. Tahir Hakim, Adv.

UPON hearing counsel the Court made the following
O R D E R

List before some other Bench.
Liberty to mention before the vacation bench.

[Charanjeet Kaur]
Court Master

[Kusum Gulati]
Court Master

ITEM NO.38 COURT NO.12 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15730/2012

(From the judgement and order dated 08/02/2012 in SCA No.3023/2003 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

STATE OF GUJARAT Petitioner(s)

VERSUS

I.R.C.G.& ANR Respondent(s)

**(With appln(s) for exemption from filing c/c of the impugned Judgment,exemption from filing O.T. and prayer for interim relief and
office report)**

Date: 02/07/2012 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Mr. Tushar Mehta,AAG
Ms. Hemantika Wahi,Adv.
Mr. S. Panda,Adv.

For Respondent(s) Mr. Y.H. Muchhala, Sr. Adv.
Mr. Rajiv Dhavan, Sr. Adv.
Mr. Huzefa Ahmadi,Adv.
Mr. Ejaz Maqbool,Adv.
Mr. Mohd. Tahir M. Hakim,Adv.
Ms. Garima Bajaj,Adv.
Mr. N. Prabhakar,Adv.

UPON hearing counsel the Court made the following
O R D E R

Adjourned to enable the State Government to produce documents which may indicate which are the religious places which are affected by communal riots, for which compensation has been claimed.
List on 9.7.2012.

(NARENDRA PRASAD) (RENUKA SADANA)
COURT MASTER COURT MASTER

ITEM NO.46 COURT NO.12 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15730/2012

**(From the judgement and order dated 08/02/2012 in SCA No.3023/2003 of
The HIGH COURT OF GUJARAT AT AHMEDABAD)**

**STATE OF GUJARAT
Petitioner(s)**

VERSUS

**I.R.C.G.& ANR
Respondent(s)**

**(With appln(s) for exemption from filing c/c of the impugned Judgment,
exemption from filing O.T., and prayer for interim relief and office report)**

Date: 09/07/2012 This Petition was called on for hearing today.

**CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE DIPAK MISRA**

For Petitioner(s) **Mr. Tushar Mehta,AAG**
Mr. Prakash Jani,Adv.
Ms. Hemantika Wahi,Adv.
Ms. Jesal,Adv.

For Respondent(s) **Mr. Y.H. Muchhala,Sr.Adv.**
Mr. Rajiv Dhavan,Sr.Adv. (N.P.)
Mr. Huzefa Ahmadi,Adv.
Mr. Ejaz Maqbool,Adv.
Mr. M.T.M. Hakim,Adv.
Mr. Mrigank Prabhakar,Adv.

UPON hearing counsel the Court made the following

O R D E R

The State Government will make available the relevant records and survey reports, if any,

dealing with the damage caused to the religious

1

places and also the amount of compensation claimed in connection with the communal riots of 2002. Affidavit may also be filed to that effect and a copy be served on the respondents so that they can come out with a reply affidavit, if necessary.

List on 30.07.2012.

(NARENDRA PRASAD)
COURT MASTER

(RENUKA SADANA)
COURT MASTER

2

ITEM NO.53 COURT NO.12 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15730/2012

(From the judgement and order dated 08/02/2012 in SCA No.3023/2003 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

STATE OF GUJARAT Petitioner(s)

VERSUS

I.R.C.G.& ANR Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment,exemption from filing O.T.,permission to file additional documents and prayer for interim relief and office report)

Date: 30/07/2012 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Mr. Tushar Mehta,AAG.
Mr. D.Nanavati,Adv.
Ms. Hemantika Wahi,Adv.

For Respondent(s) Mr. H.N.Salve,Sr.Adv.
Mr. Y.H.Muchhala,Sr.Adv.
Dr. Rajiv Dhavan,Sr.Adv.
Mr. H.Ahmadi,Adv.
Mr. Ejaz Maqbool,Adv.
Mr. M.Tahir Hakim,Adv.
Ms. Sakshi Banga,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard counsel of either side.

Reliance is placed on sub-para 3 of the judgment reported in 2009(17) SCC 90 (Archbishop Raphael Cheenath S.V.D.vs. State of Orissa and Another) which is quoted hereunder:

"The learned counsel appearing for the petitioner stated that a large number of churches have been demolished and the State Government is giving meager amount by way of compensation. Some churches and religious places were is existence which are being destroyed and the State Government is not giving any compensation on the ground that there is some dispute regarding the land. The Government may formulate a scheme regarding these religious places and take appropriate decision."

On the basis of this judgment, let the senior counsel appearing for the State of Gujarat may inform this Court whether the State is contemplating any such schemes for repair or renovation of the religious places affected by the communal riots.

List on the 14th August, 2012.

[SUMAN WADHWA]
COURT MASTER

[RENUKA SADANA]
COURT MASTER

ITEM NO.MM1 COURT NO.11 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15730/2012

STATE OF GUJARAT Petitioner(s)

VERSUS

I.R.C.G.& ANR Respondent(s)

Date: 13/08/2012 This Petition was mentioned today.

CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Mr. Tushar Mehta,AAG
Ms. Hemantika Wahi,Adv.

For Respondent(s) Mr. Ejaz Maqbool,Adv.

UPON being mentioned the Court made the following
O R D E R

List on 11.09.2012.

|(NARENDRA PRASAD) | |(RENUKA SADANA)
|COURT MASTER | |COURT MASTER
|

1

It is stated by the counsel that the matter is appearing in the daily list of 14.8.2012 as item No.1 in Court No.9

ITEM NO.MM1 COURT NO.11 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15730/2012

STATE OF GUJARAT Petitioner(s)

VERSUS

I.R.C.G.& ANR Respondent(s)

Date: 10/09/2012 This Petition was mentioned today.

CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Mr. Tushar Mehta,AAG
Ms. Hemantika Wahi,Adv.
Ms. Jesal,Adv.

For Respondent(s) Ms. Sakshi Banga,Adv.
Mr. Ejaz Maqbool,Adv.

UPON being mentioned the Court made the following
O R D E R

List on 16.10.2012.

(NARENDRA PRASAD) | |(RENUKA SADANA)
|COURT MASTER | |COURT MASTER
|

1

Note: The matter is listed on 11.09.2012 in court No.12 as item no.2

ITEM NO.MM-1 COURT NO.11 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15730/2012

(From the judgement and order dated 08/02/2012 in SCA No.3023/2003 of the HIGH COURT OF GUJARAT AT AHMEDABAD)

STATE OF GUJARAT Petitioner(s)

VERSUS

I.R.C.G.& ANR Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment,exemption from filing O.T.,permission to file additional documents and prayer for interim relief and office report))

Date: 15/10/2012 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Ms. Hemantika Wahi,Adv.

For Respondent(s) Mr. Ejaz Maqbool,Adv.

UPON being mentioned the Court made the following
O R D E R

List in 1st week of January, 2013.

|(A.D. Sharma) | |(Renuka Sadana) |
|Court Master | |Court Master |

P.S.: The matter is stated to have been listed tomorrow at Item No.2 in Court No.11.

ITEM NO.MM-1 COURT NO.11 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15730/2012

(From the judgement and order dated 08/02/2012 in SCA No.3023/2003 of the
HIGH COURT OF GUJARAT AT AHMEDABAD)

STATE OF GUJARAT Petitioner(s)

VERSUS

I.R.C.G.& ANR Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned
Judgment,exemption from filing O.T.,permission to file additional documents
and prayer for interim relief and office report))

Date: 07/01/2013 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Ms. Hemantika Wahi,Adv.

For Respondent(s) Mr. Ejaz Maqbool,A.O.R.

UPON being mentioned the Court made the following
O R D E R

List on 5.2.2013.

|(A.D. Sharma) | |(Renuka Sadana)
|Court Master | |Court Master
|

ITEM NO.MM-2 COURT NO.10 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15730/2012

(From the judgement and order dated 08/02/2012 in SCA No.3023/2003 of the HIGH COURT OF GUJARAT AT AHMEDABAD)

STATE OF GUJARAT Petitioner(s)

VERSUS

I.R.C.G.& ANR Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment,exemption from filing O.T.,permission to file additional documents and prayer for interim relief and office report))

Date: 04/02/2013 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Ms. Hemantika Wahi,Adv.(mentioned by)

For Respondent(s) Mr. Ejaz Maqbool,Adv.

UPON being mentioned the Court made the following
O R D E R

List on 26.2.2013.

(A.D. Sharma)	**(Renuka Sadana)**
Court Master	**Court Master**

ITEM NO.MM-2 COURT NO.8 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Civil) No.15730/2012
(From the judgment and order dated 08/02/2012 in SCA No.3023/2003 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

STATE OF GUJARAT Petitioner(s)

VERSUS

I.R.C.G.& ANR Respondent(s)

Date: 23/07/2013 This Petition was mentioned today.

CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE A.K SIKRI

For Petitioner(s)
Ms. Hemantika Wahi, Adv.

For Respondent(s)
Mr. Ejaz Maqbool, Adv.

UPON hearing counsel the Court made the following
O R D E R

The matter is adjourned by four weeks.

(VINOD LAKHINA)
COURT MASTER

(RENUKA SADANA)
COURT MASTER