REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION CIVIL

APPEAL NO.3249 OF 2016

State of Gujarat and Another ... Appellant(s)

Versus

The I.R.C.G. and Others ...Respondent(s)

J U D G M E N T

Dipak Misra, CJI

The present appeal, by special leave, assails the judgment and order dated 8th February, 2012, passed by the High Court of Gujarat in Special Civil Application No. 3023 of 2003 with Civil Application No. 6115 of 2004.

2. The essential facts that need to be stated are that the High Court was moved by way of a public interest litigation seeking direction/order directing the State and its functionaries 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 the State in the year 2002 under the supervision and guidance of the Court and to immediately repair and restore the same within specified time limit and further command the State Government to suitably and adequately compensate the trusts and institutions owning the said religious places. Various assertions were made before the High Court. A counter affidavit in oppugnation was filed by the State.

3. The High Court dwelling upon certain aspects eventually issued number of directions. The relevant part of the High Court order reads as follows:

> "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.
>
> 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."

4. After so stating, the High Court has appointed all the Principal District Judges of the various districts in the 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. After so directing, the High Court further proceeded to state that the aggrieved persons should lodge their respective claim with those Special Officers within two months from the date of judgment supported by the documentary evidence they propose to rely in support of their claim of damages; and that apart, they will be entitled to adduce oral evidence to prove the exact position of the structure as it stood at the time of causing damages. After so stating, the High Court directed as under: "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."

And again:-

"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.

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.

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."

5. When the matter travelled to this Court, the hearing continued and on 30th July, 2012, the following order was passed:

"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 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."

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."

6. On 27th August, 2013, the Court passed the following order:

> "Mr. Tushar Mehta, Sr. AAG appearing for the State of Gujarat, submits that the scheme is under preparation and the same would be filed within a period of four weeks.
>
> Put up on October 01, 2013.
>
> *Status quo* shall be maintained for a period of one month from today."

7. In the course of hearing, the Union of India was made a party, but, eventually, the arguments were advanced by the learned senior counsel appearing for the State of Gujarat and the learned senior counsel appearing for the respondents.

8. Mr. Tushar Mehta, learned senior counsel appearing for the State of Gujarat has raised the following contentions:

(a) The State fund which consist payment of various taxes by citizens cannot be directed by the High Court to be spent for restoration/construction of any religious places by issu- ing a writ under Article 226 of the Constitution of India, inas- much as under the scheme of Articles 25, 26, 27 and 28 un- der the heading "Right to Freedom of Religion", the Constitu- tion protects certain rights while prohibiting certain actions. What is protected is right to profess, practice and propagate religion; and what is prohibited is compelling any person to pay any tax, proceeds of which is to be spent for the promo- tion or maintenance of any particular religion or religious de- nomination. Though right to profess, practice and propagate religion is a Fundamental Right, the Court has conclusively held that the said fundamental right to profess, practice and propagate cannot and does not include to profess, practice or propagate any religion from any particular place. For the said purpose, inspiration has been drawn from the decisions rendered in ***The Commissioner, Hindu Religious Endow- ments, Madras v. Sri Lakshmindra Thirtha Swamiar of***

Sri Shirur Mutt[1] and ***Dr. M. Ismail Faruqui and others v. Union of India and others***[2].

(b) In cases of damage to properties (religious in the present case but any other properties in general) an alleged deprivation is of "Right to Property" which may give rise to a civil cause of action for damages by aggrieved parties only. In view of the deletion of "Right to Property" from Part III of the Constitution of India as a fundamental right under the 43rd Constitutional Amendment and the same right being only a Constitutional Right under Article 300A, the High Court ought not have exercised its jurisdiction under Article 226 as a public law remedy for awarding compensation (for an alleged breach of "Right to Property", a non-fundamental right) when in all decided cases the Court has confined juris- diction of Constitutional Courts as "Public Law Remedy" only in cases of breach/violation of fundamental right and that too only the right Article 21 of the Constitution. In this re- gard, learned senior counsel has commended us to ***Ra- bindra Nath Ghosal v. University of Calcutta and oth- ers***[3], ***Hindustan Paper Corpn. Ltd. v. Ananta Bhattachar-***

1 AIR 1954 SC 282
2 (1994) 6 SCC 360
3 (2002) 7 SCC 478

jee and others[4] and ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy and others***[5].

(c) Issue of any writ having the effect of use of tax-payers' money for repair/restructuring/construction of any 'religious place' would offend the sprit and object of Article 27 of the Constitution. On a true, meaningful and purposive construc- tion of Article 27, no writ, order or direction can be issued having the direct or indirect effect of use of State funds for repair/ restructuring/ construction of any religious places. The term "of any particular religion" or "religious denomina- tion" as used in Article 27 needs to be given wider interpreta- tion so as to protect, preserve and give effect to the spirit of Article 27. On a purposeful interpretation of Article 27, it be- comes apparent that the funds of the State cannot be di- rected to be used for 'maintenance' [which includes repair/ restructuring/ construction] of any religion (which essentially includes religious places) or may be all the religions whether individually or simultaneously. If such an interpretation is not given, there can be situation where a State can declare a portion of State fund to be used for maintenance of places of

4 (2004) 6 SCC 213
5 AIR 2012 SC 100

worship of all religions which will be in stark contrast to the spirit and object of Article 27 in particular and that of Arti- cles 25, 26, 27 and 28 in general. On a meaningful and pur- posive construction of Article 27, even in such a case when the State fund is directed by the High Court by way of a writ for 'maintenance' of all religions [which term would necessar- ily include repair/ restructuring/ construction of 'places of worship'], it would still be offending the secular fabric of the Constitution and it would be violative of Article 27 in particu- lar. In this regard, our attention has been invited to ***Arch R. Everson v. Board of Education of the Township of Ew- ing***[6].

(d) The High Court, in exercise of its constitutional writ ju- risdiction under Article 226 of the Constitution of India can grant compensation only when there is an "established" breach of Article 21 of the Constitution. This Court has time and again taken the view that remedy of writ as a 'public law remedy' to award compensation is restricted to violation of Article 21 of the Constitution only. If a constitutional court finds some action to be violative of any other Fundamental

Rights; say an arbitrary action offending Article 14, curtail-

6 330 US 1

ment of Freedom of Speech and Expression under Article 19(1)(g), etc. the Constitutional Court will strike down such action or will issue an injunctive writ. However, Constitu- tional Court have so far never awarded damages for breach of such Fundamental Rights other than the ones under Article 21; and Article 21 would not include "Right to Worship" by a person following any religion from a particular place; there- fore, alleged damage to any religious structure of any religion would not fall within the sweep of violation of Article 21 of Constitution. The High Court, therefore, ought not to have is- sued an interim writ direction for quantification of 'actual damages' to 'places of worship.' To bolster the said submis- sion, reliance is placed on the decisions rendered in ***M.C. Mehta and another v. Union of India and others***[7]***, Hin- dustan Paper Corpn. Ltd.*** (supra) and ***Association of Vic- tims of Uphaar Tragedy*** (supra).

(e) Award of compensation by constitutional courts is a remedy in public law. The very genesis of the concept of award of damages/compensation has its roots in the Law of Torts. This Court has, therefore, consistently taken the view that remedy of writ by a constitutional court to award com-

7 (1987) 1 SCC 395

pensation for breach of Fundamental Rights would be exer- cised only when the "person aggrieved" comes before the con- stitutional court and a stranger who has no enforceable right against the State, cannot hold the brief on behalf of others who have chosen not to approach the Court. It is submitted that any organization, merely by making representations to the State Government claiming to represent "aggrieved par- ties" would not become "an aggrieved party" itself and thereby acquire *'locus standi'* to maintain a petition under Article 226 of the Constitution. Learned counsel in order to buttress the said submission, has commended us to ***Com- mon Cause, A Registered Society v. Union of India and others***[8].

(f) The High Court, under the impugned order, has virtu- ally legislated by providing a separate "forum" through the statutory civil remedy before a competent civil court does not exist which has not been availed of by any "aggrieved person. The jurisdiction exercised by the High Court, in the absence of a vacuum, providing for enforcement of such right to re- ceive compensation, the High Court could not have created a

forum since it has conferred adjudicating power in it in a dif-

8 (1999) 6 SCC 667

ferent way. In this regard, support has been drawn from ***P. Ramachandra Rao v. State of Karnataka***[9], ***Common Cause (A Registered Society) v. Union of India & others***[10] and ***Pravasi Bhalai Sangathan v. Union of India & oth- ers***[11]. That apart, the High Court has directed computation of actual compensation to "places of worship" and has created a totally new remedy by the impugned judgment which is un- known to law. The High Court has issued an interim direc- tion for computation of actual damages to "places of worship" to be made by "Special Officers" who are District Judges of the District. Such direction is neither manageable, enforce- able nor capable of execution as per law, for it is not known as to what procedure such "Special Officers" are required to follow, while seeking to adjudicate the quantum. It is diffi- cult to fathom as to what is the remedy of any party ag- grieved either by an interim order or final order of "Special Officers" against such interim or final order. The order of High Court is again incapable of enforcement since religious places are only vaguely identified. Such religious places are not shown to be under the administration of any recognized

9 (2002) 4 SCC 578
10 (2008) 5 SCC 511
11 (2014) 11 SCC 477

statutory body like a public trust, wakf or a society, etc. When all people residing in the vicinity of such vaguely described religious places are managing the religious places as a community, there are bound to be multiple claimants who would pray for compensation since the entire local community might have contributed in the repair/reconstruction/construction of the concerned places of worship. There is no methodology as to in what manner such *inter se* disputes amongst the claimants are to be adjudicated and/or appropriated. It is also not clear when the believers of a particular religious place of worship have already restored the damaged place of worship [which has in fact been done before many years], how the amount of compensation would be appropriated amongst such believers who have contributed without any claims.

(g) The statutory period of limitation for such affected persons to otherwise approach the civil courts has already expired years back. However, the very same affected persons [who never took recourse to any legal remedy] are now permitted to approach the District Judges with a prayer to adjudicate their claims for compensation as a civil suit. The High

Court could not have, by issuing such interim writ, extended the statutory period of limitation indirectly.

9. Mr. Y.H. Muchhala and Mr. Huzefa Ahmadi, learned senior counsel appearing for the respondents have raised the following contentions:

(a) Attack on religious places of worship is an attack on religious symbolism of people who hold them as sacred. Destruction of places of worship belonging to weaker section of the society by a dominant group is to inflict humiliation on them and thereby violate Article 21 of the Constitution. If the State fails to protect large scale destruction of places of worship belonging to weaker or less dominant section of the people it results in breach of Article 21 of the Constitution. Article 14 enjoins on the State to give equal protection of laws to all persons and, therefore, it is the fundamental obli- gation of the State to protect religious places of worship be- longing to every section of the people. This is one of the facets of secularism. Therefore, there is a breach of Funda- mental Right of the said sufferers. For the said purpose, they have relied upon ***Dr. M. Ismail Faruqui*** (supra) and ***S.R. Bommai and others v. Union of India and others***[12].

12 (1994) 3 SCC 1

(b) As it is obligatory on the part of the State to maintain the law and order situation and there was a failure, the High Court is justified in invoking the 'public law remedy' as such negligence could invite the principle of concept of "Constitu- tional tort". That apart, the State Government has specifi- cally accepted before the National Human Rights Commis- sion (NHRC) that it would restore the places of worship which have been damaged. Emphasis has been laid on various as- pects of the reports of the NHRC. In view of the reports, it was the obligation of the State Government to inform the elected representatives of the people of the concerned legisla- tures the reasons for non-acceptance of the NHRC reports. In the absence of non-disclosure of reasons, the State be- comes absolutely responsible for the damages caused and is liable to pay the compensation.

(c) In the instant case, the petitioner before the High Court had sought relief against the State Government and not against any public official/Minister. The case is rested on the breach of the fundamental rights of the persons whose places of worship have been destructed because of the com- prehensive failure of law and order in the State of Gujarat

during the crucial period for whatever reason and for which the State Government is responsible. Such failure on the part of the State Government amounts to violation in Public Law. The Respondent's claim is based in public law for com- pensation for contravention of fundamental and human rights. The Respondent's right to claim such compensation under Article 226 of the Constitution is a well settled law as per the authority in ***Sanjay Gupta and others v. State of Uttar Pradesh and others***[13].

(d) The plea of the State Government that to provide com- pensation for destruction of places of worship is violative of Article 27 is totally erroneous because in the first place no person is compelled to pay any tax in the instant case. How- ever, the relief is sought against the State Government to pay compensation from the public exchequer. But the liability of the State Government to compensate those who have suf- fered by destruction of places of worship is not for the pro- motion of maintenance of any particular religion or religious denomination. The cause of action is based on the principle that if the State has by its inability or for whatever reason

has failed to protect the fundamental rights or human rights

13 (2015) 5 SCC 283

then it has to compensate the aggrieved person for such violation. The compensation is appropriated for providing relief for violation of human rights and not for the promotion of maintenance of any particular religion or religious denomination and thereby the concept of secularism is not affected. In this regard, heavy reliance is placed on the decisions of the Kerala High Court in ***K. Reghunath v. State of Kerala and another***[14], the Orissa High Court in ***Bira Kishore Mohanty v. State of Orissa***[15] and the Karnataka High Court in ***Pa- panna and Etc. v. State of Karnataka and others***[16]. The directions issued by this Court in ***Archbishop Raphael Cheenath S.V.D. v. State of Orissa and another***[17] have also been placed reliance upon to strengthen the said proposition. The decision supports the principle that the incurring of expenses for reconstruction and restoration of places of worship damaged in violence would not be in violation of Article 27 of the Constitution of India.

(e) The argument that the High Court has created a forum is without any substance because the State is entitled to con-

14 AIR 1974 Kerala 48
15 AIR 1975 Orissa 8
16 AIR 1983 Karnataka 94
17 (2009) 17 SCC 87 and 90

tend before the District Judge that a particular place of wor- ship was/is unauthorized and the District Judge will con- sider such plea and report to the High Court. That apart, the High Court in its extraordinary jurisdiction has basically called for a report from the District Judge after adjudication when the High Court can wait because it has not finally dis- posed of the writ petition.

(f) It is the fundamental obligation of the State to protect the places of worship which is the facet of secularism and also covered by Article 14 of the Constitution. When there is fail- ure, the State is liable to pay the damages for the same. There cannot be distinction in law between damage done to the collective property of the community and to an individ- ual. The basis for awarding compensation for destruction to an individual's property or the community's property is on the principle that the State has failed to fulfill its fundamen- tal constitutional obligation.

(g) Articles 14, 21, 25 and 26 of the Constitution have to be woven together and they cannot be compartmentalized in a strait-jacket manner. It is an established principle of Consti- tutional law that the fundamental rights cannot be compart-

mentalized because one fundamental right draws sustenance from the other fundamental rights as well. In this regard, strength has been drawn from ***Rustom Cowasjee Cooper v. Union of India***[18].

(h) The relief scheme framed by the High Court is in conso- nance with the guidelines laid down by this Court in ***De- struction of Public and Private Properties, In Re v. State of Andhra Pradesh and others***[19]. Similar schemes were framed in ***Ranganathan and another v. Union of India and others***[20], ***Ranganathan and another v. Union of In- dia and others***[21] and ***Association of Victims of Uphaar Tragedy*** (supra). Guidelines are laid by the Court as there is no law for compensation for such losses and the same are laid down to deal with exigencies till the law for the same is framed. Reliance has been placed on the principles set out in ***Destruction of Public and Private Properties, In Re*** (supra).

(i) As there had been failure of law and order situation at the relevant time it becomes the constitutional obligation of the

18 (1970) 2 SCC 298
19 (2009) 5 SCC 212
20 (1999) 6 SCC 26
21 (2004) 9 SCC 579

State to compensate the victims and also to reimburse the organizations where repairing work had been carried out or restructuring had been done or, if not done, to do it. The obligation to protect the rights of the minorities is the facet of law, right guarantee under the Constitution and also a part of the international conventions.

10. Having noted the submissions, it is necessary to clear the maze. The assertions in the public interest litigation be- fore the High Court did not project the case of any individual. To explicate, it was not a case for grant of compensation for any individual injury or damage. Fundamentally, the writ petition was preferred for issue of direction for seeking repair and restoration of mosques, dargahs, graveyards, khankahs and other religious places damaged during the riot in 2002. Therefore, we do not intend to use the expression "victim" in our analysis. It is worthy to note that the High Court had also taken note of the fact that the reports submitted by the NHRC on the incident were not laid before the State Legisla- ture and hence, there was violation of Section 20 of the Pro- tection of Human Rights Act, 1993. Similar stand has been

taken before this Court. In the course of hearing, the reports submitted by NHRC were laid before the State Legislature.

11. The thrust of the matter is whether in such a situation, the State would be obligated to compensate the institutions or bodies that look after the religious places which were dam- aged by restoring to their original position or granting reim- bursement of the amount to the people who have done the same.

12. In this regard, some of the authorities that have been commended to us require to be looked at. We may immedi- ately clarify that the learned senior counsel appearing for the respondents has copiously referred to us to various interna- tional conventions, the opinions of statutes of International Criminal Tribunal of other countries and also judgments of European Court of Human Rights. As far as present *lis* is concerned, we are of the considered opinion that the same are not relevant. We think it appropriate to refer to the au- thorities of this Court which have expressed this view to a certain extent pertaining to the religious rights.

13. Mr. Mehta, learned senior counsel appearing for the State would contend that the respondents cannot claim as a

matter of right as the State is not bound to spend any amount for restoration of the place of worship. Mr. Much- hala, learned senior counsel for the respondents, per contra, would contend that when damage is caused to the places of worship of a minority, the right of the said group or stream is affected and that right would come within Articles 25 and 26 of the Constitution of India.

14. Articles 25 and 26 read as under:

> **"Article 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;
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> (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.
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> *Explanation I.*—The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.
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> *Explanation II.*—In sub-clause (b) of clause (2), 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.

> **Article 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."

15. The submission is that the fundamental rights cannot be compartmentalized as one draws sustenance from the other. In essence, the argument is that strait-jacket compart- mentalization is impermissible and when there is violation of human rights of a class, that is, minority (because of damage caused to the places of worship), the rights in a cluster spring up to action.

16. In ***The Commissioner, Hindu Religious Endowments, Madras*** (supra), the Constitution Bench, while dealing with Articles 25 and 26, held:

> "22. It is to be noted that both in the American as well as in the Australian Constitutions the right to freedom of religion has been declared in unre- stricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on grounds of

morality, order and social protection. An adjustment of the competing demands of the interests of Gov- ernment and constitutional liberties is always a del- icate and difficult task and that is why we find dif- ference of judicial opinion to such an extent in cases decided by the American courts where ques- tions of religious freedom were involved.

Our Constitution-makers, however, have embod- ied the limitations which have been evolved by judi- cial pronouncements in America or Australia in the Constitution itself and the language of Articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. As we have already indicated, freedom of religion in our Constitution is not confined to reli- gious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitu- tion itself has laid down. Under Article 26(b), there- fore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters."

17. In ***S.R. Bommai*** (supra), Sawant, J. opined:

"… religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our Constitution. We have accepted the said goal not only because it is our historical legacy and a need of our national unity and integrity but also as a creed of universal brotherhood and humanism. It is our cardinal faith. Any profession and action which go counter to the aforesaid creed are a prima facie proof of the conduct in defiance of the provisions of our Constitution."

18. In the said case, B.P. Jeevan Reddy, J. observed:

> "While the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the State is concerned, i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally…."

19. Ahmadi, J. (as His Lordship then was), concurring with the views of Justice Sawant, Ramaswamy and Jeevan Reddy, JJ., held:

> "Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of Secularism was very much embedded in our constitutional philosophy. The term 'Secular' has advisedly not been defined presumably because it is a very elastic term not capable of a precise defi- nition and perhaps best left undefined. By this amendment what was implicit was made explicit."

20. In ***Dr. M. Ismail Faruqui*** (supra), after referring to the authority in ***S.R. Bommai*** (supra), the Constitution Bench held:

> "The Preamble of the Constitution read in particular with Articles 25 to 28 emphasises this aspect and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional va- lidity of any legislation on the touchstone of the

> Constitution. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution."

21. The aforesaid authorities clearly enunciate that as far as State is concerned, it is obliged under the Constitution to treat persons belonging to all faiths and religions with equal- ity. The individual has his freedom to practice the religion as he desires and it is totally immaterial from the perspective of the State. The protection of property and places of worship is an essential part of secularism. The freedom of individual in this regard has to be respected and there has to be tolerance for each other. This principle has been accepted in the con- stitutional scheme keeping in view the concrete sustenance of national unity and integrity.

22. Having said so, we are required to examine the liability of the State to repair or restore the places of worship which are damaged by the mob during the riot. There is no dispute that the places of worship belonging to all religions have been damaged and affected. Be it clarified, though the learned se- nior counsel appearing for the respondents laid immense stress on the failure of law and order situation and non-exis- tence of the active role of the executive to curtail the disaster,

we need not dwell upon the same inasmuch as there had been mob fury and places of worship at certain places have been damaged. Learned senior counsel for the appellants submits that the State cannot be commanded to repair or re- store any place of worship as such an act on the part of the State will create a dent in the secular fabric and further the expenditure from the State exchequer is impermissible in view of the language employed in the Article 27 of the Con- stitution.

23. Before dwelling upon Article 27, we may profitably refer to certain aspects that have been highlighted in ***Destruction of Public and Private Properties, In Re*** (supra). In the said case the two-Judge Bench, taking a serious note of various instances of large-scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like, had initiated *suo motu* proceedings. It had called for re- ports from two committees - one headed by Justice K.T. Thomas and the other by Mr. F.S. Nariman, a senior member of the legal profession. It has referred to the recommenda- tions of the Committee headed by Justice K.T. Thomas and also that of F.S. Nariman Committee. Summarizing the basic

principles as suggested by Nariman Committee, the Court enumerated the same:

> (1) The basic principle for measure of damages in torts (i.e. wrongs) in property is that there should be "restitutio in integrum" which conveys the idea of "making whole".
>
> (2) Where any injury to property is to be compensated by damages, in settling the sum of money to be given for reparation by way of damages the Court should as nearly as possible get at that sum of money which will put the party who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.
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> (3) In this branch of the law, the principle of restitutio in integrum has been described as the "dominant" rule of law. Subsidiary rules can only be justified if they give effect to that rule.
>
> (3.1) In actions in tort where damages are at large i.e. not limited to the pecuniary loss that can be specifically proved, the Court may also take into account the defendant's motives, conduct and manner of committing the tort, and where these have aggravated the plaintiff's damage e.g. by injuring his proper feelings of dignity, safety and pride— aggravated damages may be awarded. Aggravated damages are designed to compensate the plaintiff for his wounded feelings, they must be distinguished from exemplary damages which are punitive in nature and which (under English Law) may be awarded in a limited category of cases.
>
> (3.2) "Exemplary damages" has been a controversial topic for many years. Such damages are not compensatory but are awarded to punish the

defendant and to deter him and others from similar behaviour in the future. The law in England (as restated in *Rookes v. Barnard*[22] affirmed in *Cassell & Co. Ltd. v. Broome*[23]) is that such damages are not generally allowed. In England they can only be awarded in three classes of cases (i) where there is oppressive, arbitrary or unconstitutional action by servants of the Government; (ii) where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the claimant; and (iii) where such damages are provided by statute.

(3.3) In the decision in *Kuddus v. Chief Constable of Leicestershire Constabulary*[24], the most recent judgment of the House of Lords, the Law Lords did not say that in the future the award of exemplary damages should be restricted only in the cases mentioned in *Rookes v. Barnard* (as affirmed in *Cassell & Co. Ltd. v. Broome*). Lord Nicholls in his speech at p. 211 stated that: (*Kuddus* case, WLR p. 1807, para 68)

> "68. … the essence of the conduct constituting the court's discretionary jurisdiction to award exemplary damages is conduct which was an outrageous disregard of the plaintiff's rights."

(3.4) In this Committee's view, the principle that courts in India are not limited in the law of torts merely to what English Courts say or do, is attracted to the present situation. This Committee is of the view that this Hon'ble Court should evolve a principle of liability, punitive in nature, on account of vandalism and rioting leading to damages/destruction of property public and private. Damages must also be such as would deter people

22 1964 AC 1129: (1964) 2 WLR 269: (1964) 1 ALL ER 367 (HL)
23 1972 AC 1027: (1972) 2 WLR 645: (1972) 1 ALL ER 801 (HL)
24 (2002) 2 AC 122: (2001) 2 WLR 1789: (2001) 3 ALL ER 193: 2001 UKHL 29 (HL)

from similar behaviour in the future, after all this is already the policy of the law as stated in the Prevention of Damage to Property Act, 1984, and is foreshadowed in the order of this Hon'ble Court dated 18-6-2007 making the present reference.

(3.5) In Winfield and Jolowicz on Tort, 17th Edn. (at pp. 948-49) the authors set out the future of exemplary damages by quoting from the decision in *Kuddus v. Chief Constable of Leicestershire Constabulary* where two Law Lords, Lord Nicholls and Lord Hutton expressed the view that such damages might have a valuable role to play in dealing with outrageous behaviour. The authors point out that the boundaries between the civil and criminal law are not rigid or immutable and the criminal process alone is not an adequate mechanism to deter wilful wrongdoing. The acceptability of the principle of compensation with punishment appears to have been confirmed by the Privy Council (in *Gleaner Co. Ltd. v. Abrahams*[25] AC at 54) where it was felicitously said that: (AC p. 647, para 54)

> "54. … Oil and vinegar may not mix in solution but they combine to make an acceptable salad dressing."

(3.6) The authors go on to say that exemplary damages certainly enjoy a continuing vitality in other common law jurisdictions, which, by and large, have rejected the various shackles imposed on them in England and extended them to other situations, thus punitive damages were held to be available in Australia in cases of "outrageous" acts of negligence. The Law Commission of Australia has also concluded, after a fairly evenly balanced consultation, that exemplary damages should be retained where the defendant "had deliberately and outrageously disregarded the plaintiff's rights".

25 (2004) 1 AC 268: (2003) 3 WLR 1038 (PC)

24. The Court also referred to in detail to Justice K.T. Thomas Committee which basically dealt with law and order and tort. After approving the reports of the Committee, the Court took note of the absence of legislation and framed the following guidelines:

> "(I) Wherever a mass destruction to property takes place due to protests or thereof, the High Court may issue suo motu action and set up a machinery to investigate the damage caused and to award compensation related thereto.
>
> (II) Where there is more than one State involved, such action may be taken by the Supreme Court.
>
> (III) In each case, the High Court or the Supreme Court, as the case may be, appoint a sitting or retired High Court Judge or a sitting or retired District Judge as a Claims Commissioner to estimate the damages and investigate liability.
>
> (IV) An assessor may be appointed to assist the Claims Commissioner.
>
> (V) The Claims Commissioner and the assessor may seek instructions from the High Court or the Supreme Court as the case may be, to summon the existing video or other recordings from private and public sources to pinpoint the damage and establish nexus with the perpetrators of the damage.
>
> (VI) The principles of absolute liability shall apply once the nexus with the event that precipitated the damage is established.
>
> (VII) The liability will be borne by the actual perpetrators of the crime as well as the organisers of the event giving rise to the liability—to be shared, as finally determined by the High Court or the Supreme Court as the case may be.
>
> (VIII) Exemplary damages may be awarded to an extent not greater than twice the amount of the

damages liable to be paid.
(IX) Damages shall be assessed for: (a)
damages to public property;
(b) damages to private property;
(c) damages causing injury or death to a person or persons; and
(d) cost of the actions by the authorities and police to take preventive and other actions.
(X) The Claims Commissioner will make a report to the High Court or the Supreme Court which will determine the liability after hearing the parties."

After so stating, the Court directed that the guidelines shall be operative.

25. In this regard, reference to the authority in ***Sanjay Gupta*** (supra) would be fruitful. The factual matrix in the said case pertains to Meerut Fire Tragedy where sixty-four people had died. While dealing with the grant of interim compensation, the Court held:

"Having so opined, we cannot comatose our judicial conscience to the plight of the victims who have approached this Court. Some of the petitioners are themselves the victims or next kin of the deceased and the injured persons who have suffered because of this unfortunate man-made tragedy. It is the admitted position that 64 deaths have occurred and a number of persons have suffered grievous injuries. There are also persons who have suffered simple injuries as has been asserted by the State. We have been apprised at the Bar that the State Government has already paid Rs 2 lakhs to the legal representatives of the persons who have breathed their last, and a sum of rupees one lakh has been paid by the Central Government. As far as seriously

injured persons are concerned, rupees one lakh has been paid by the State Government and Rs 50,000 has been paid to the victims who have suffered simple injuries.

The question that we would like to pose is whether this Court should wait for the Commission's report and then direct the State Government to pay the amount of compensation to the grieved and affected persons, who have been waiting for the last eight years, or should they get certain sum till the matter is finalised. We will be failing in our duty if we do not take into consideration the submission of Mr. Shanti Bhushan, learned Senior Counsel, that as far as Respondents 10 to 12 are concerned, no liability can be fastened under Article 32 of the Constitution of India, and definitely not at this stage. As far as first part of the submission is concerned, we keep it open to be dealt with after the report is obtained by this Court. As far as the second aspect is concerned, we shall deal with it after we address the issue of public law remedy and the liability of the State in a case of this nature."

26. In ***Association of Victims of Uphaar Tragedy*** (supra),

Radhakrishnan, J., in his concurring opinion, opined:

" … Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the public safety legislation is, therefore, very high, compared to the statutory powers and supervision

> expected from the officers functioning under the statutes like Companies Act, Cooperative Societies Act and such similar legislations. When we look at the various provisions of the Cinematographic Act, 1952 and the Rules made thereunder, the Delhi Building Regulations and the Electricity laws the duty of care on officials was high and liabilities strict.
>
> * * *
>
> Legal liability in damages exist solely as a remedy out of private law action in tort which is generally time-consuming and expensive, and hence when fundamental rights are violated the claimants prefer to approach constitutional courts for speedy remedy. The constitutional courts, of course, shall invoke its jurisdiction only in extraordinary circumstances when serious injury has been caused due to violation of fundamental rights, especially under Article 21 of the Constitution of India. In such circumstances the Court can invoke its own methods depending upon the facts and circumstances of each case."

27. The purpose of referring to the aforesaid authorities is that the learned senior counsel has canvassed that the benefit under the public law remedy is available to the bodies or institutions that look after the religious places of worship of each and every religion. The hypothesis that is canvassed is that the damage caused affects the dignity of that particular community or a group. The stand of the State is that keeping in view the concept of secularism and the role of the State, it is inappropriate to direct the State to spend the

amount from the State exchequer for these purposes. In this context, as stated earlier, Article 27 becomes relevant.

28. In ***Hindustan Paper Corpn. Ltd.*** (supra), the Court was considering whether the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India could have directed payment of interest by way of compensation. The issue before the Court pertained to an order by which the Division Bench of the Calcutta High Court directed the appellant before this Court to refund the amount advanced to it with 12% *per annum* interest to the respondents. The factual matrix in the said case was that the Ministry of Human Resource Development, Department of Education, Government of India floated a scheme purported to be for securing equitable distribution of white printing paper. The said scheme had certain relevant features. Pursuant to the scheme, the respondents allegedly placed orders for supply of white paper upon the appellant therein which the appellant Corporation could not supply. The learned single Judge by *ex parte* order had directed the Corporation to take immediate steps for release of white concessional paper to the respondents wherefor allegedly the advance money had

already been accept by them. The application for recall was dismissed. In appeal, the Division Bench noted the contention of the appellant and took into account that the appellant had already refunded the large amount to the allotees without any interest subsequent to the discontinuation of the scheme. However, it held that by such act it could not absolve the Corporation from the liability to compensate the respondents in cash if not in kind in consideration of their default and accordingly it directed for payment of interest at 12% *per annum*. The three-Judge Bench observed that the scheme in question did not have the force of law and even if it did, a writ of mandamus could not have been issued by directing grant of compensation. In that context, the Court ruled:

> "… Public law remedy for the purpose of grant of compensation can be resorted to only when the fundamental right of a citizen under Article 21 of the Constitution is violated and not otherwise. It is not every violation of the provisions of the Constitution or a statute which would enable the court to direct grant of compensation. The power of the court of judicial review to grant compensation in public law remedy is limited. The instant case is not one which would attract invocation of the said rule. It is not the case of the respondents herein that by reason of acts of commission and omission on the part of the appellant herein the fundamental right of the respondents under Article 21 of the Constitution has been violated."

29. On a perusal of the judgment in its entirety, we find the case hinges on its own facts regarding grant of compensation. The power of the court of judicial review to grant compensation in public law is limited. There cannot be any quarrel about the said proposition of law.

30. In ***Rabindra Nath Ghosal*** (supra), the assail was to the order of the learned single Judge whereby he had directed the University of Calcutta to pay to the appellant before him Rs. 60,000/- as monetary compensation and damages. The Division Bench overturned the same by holding that in the facts of the case compensation should have been awarded but the proper course should have been to leave the parties to agitate their grievances before the civil court. This Court referred to the decision in ***Common Cause, A Registered Society***[26] and adverted to the concept of public law remedy and opined:

> "A claim in public law for compensation for contra- vention of human rights and fundamental freedoms, the protection of which is guaranteed in the Consti- tution is undoubtedly an acknowledged remedy for protection and enforcement of such right and such a claim based on strict liability made by resorting to a constitutional remedy, provided for the enforce- ment of fundamental right is distinct from, and in

26 (1996) 6 SCC 667

> addition to the remedy in private law for damages for the tort, as was held by this Court in *Nilabati Be- hera*[27]."

And again:

> "The courts having the obligation to satisfy the so- cial aspiration of the citizens have to apply the tool and grant compensation as damages in public law proceedings. Consequently when the court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protec- tion of fundamental rights and grants compensa- tion, it does so under the public law by way of pe- nalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the court to grant compen- sation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The court in exercise of extraordinary power under Arti- cles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exem- plary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."

31. Mr. Mehta, learned senior counsel appearing for the appellants has pressed hard on the said passage. According to him in a case of the present nature, the High Court could

27 (1993) 2 SCC 746

have not in exercise of jurisdiction under Article 226 of the Constitution constituted a forum for grant of compensation and directing reimbursement. Learned senior counsel further submitted that violation of fundamental right under Article 21 is different than what has been averred in the writ filed before the High Court inasmuch as the gravamen of whole issue pertained to grant of damages caused to the places of worship.

32. Article 27 of the Constitution reads as follows: "**Article 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 ex- penses for the promotion or maintenance of any par- ticular religion or religions denomination."

33. In ***The Commissioner, Hindu Religious Endowments, Madras*** (supra), the Court, while commenting on Article 27, held thus:

> "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 to 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 Section 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 institution 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, Article 27 of the Constitution is not attracted to the facts of the present case."

34. In ***Prafull Goradia v. Union of India***[28], the Court, while interpreting Article 27, referred to the decisions in ***The Commissioner, Hindu Religious Endowments, Madras*** (supra), ***Sri Jagannath Ramanuj Das and another v. State of Orissa and another***[29] and also alluded to ***T.M.A. Pai Foundation and others v. State of Karnataka and others***[30] and opined that the said decisions did not really deal with Article 27 at any depth. Elaborating further, the two-Judge Bench held:

> "6. There can be two views about Article 27. One view can be that Article 27 is attracted only when the statute by which the tax is levied specifically

28 (2011) 2 SCC 568
29 AIR 1954 SC 400
30 (2002) 8 SCC 481

states that the proceeds of the tax will be utilised for a particular religion. The other view can be that Article 27 will be attracted even when the statute is a general statute, like the Income Tax Act or the Central Excise Act or the State Sales Tax Acts (which do not specify for what purpose the proceeds will be utilised) provided that a sub- stantial part of such proceeds are in fact utilised for a particular religion. In our opinion Article 27 will be attracted in both these eventualities. This is because Article 27 is a provision in the Consti- tution, and not an ordinary statute. The princi- ples of interpreting the Constitution are to some extent different from those of interpreting an or- dinary statute vide the judgment of Hon'ble Sikri, J. in *Kesavananda Bharati v. State of Kerala*[31] (vide SCC para 15). The object of Article 27 is to maintain secularism, and hence we must con- strue it from that angle.

7. As Lord Wright observed in *James v. Commonwealth of Australia*[32], a Constitution is not to be interpreted in a narrow or pedantic manner (followed in Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, In re[33]). This is because a Constitution is a con- stituent or organic statute, vide *British Coal Corpn. v. R.*[34] and *Kesavananda Bharati v. State of Kerala* (supra) (vide SCC para 506). While a statute must ordinarily be construed as on the day it was enacted, a Constitution cannot be con- strued in that manner, for it is intended to en- dure for ages to come, as Marshal, C.J. of the US Supreme Court observed in *M'Culloch v. Mary- land*[35], and Holmes, J. in *Missouri v. Holland*[36]. Hence a strict construction cannot be given to it.

8. In our opinion Article 27 would be violated if a substantial part of the entire income tax col-

31 (1973) 4 SCC 225
32 1936 AC 578 : (1936) 2 ALL ER 1449 (PC)
33 AIR 1939 FC 1
34 AIR 1935 PC 158
35 4 L Ed 579 : 17 US 316 (1819)
36 64 L Ed 641 : 252 US 416 (1919)

> lected in India, or a substantial part of the entire central excise or the customs duties or sales tax, or a substantial part of any other tax collected in India, were to be utilised for promotion or main- tenance of any particular religion or religious de- nomination. In other words, suppose 25% of the entire income tax collected in India was utilised for promoting or maintaining any particular reli- gion or religious denomination, that, in our opin- ion, would be violative of Article 27 of the Consti- tution.
>
> x x x x x
>
> 10. In our opinion, if only a relatively small part of any tax collected is utilised for providing some conveniences or facilities or concessions to any religious denomination, that would not be vi- olative of Article 27 of the Constitution. It is only when a substantial part of the tax is utilised for any particular religion that Article 27 would be violated."

Be it stated, in the said case the Court was dealing with the constitutional validity of the Haj Committee Act, 1959 and the Amendment Act of 2002 on the foundation that the said Act is violative of Articles 14, 15 and 27 of the Constitu- tion.

35. In this regard, as stated earlier, the learned senior counsel for the respondent has commended us to the deci- sions of the Kerala High Court in ***K. Reghunath*** (supra), the Orissa High Court in ***Bira Kishore Mohanty*** (supra) and the

Karnataka High Court in ***Papanna*** (supra). As we have al- ready copiously reproduced few decisions pertaining to Arti- cle 27, there is no necessity to refer to the High Court judg- ments.

36. Having referred to these decisions, it is obligatory to re- fer in detail to the order passed in ***Archbishop Raphael Cheenath S.V.D. v. State of Orissa and another***[37]. The said authority has already been referred to in the order of the Court passed on 30.07.2012. In ***Archbishop Raphael Cheenath S.V.D. v. State of Orissa and another***[38], the Court, while dealing with the attack on the churches and public institutions, directed as follows:

> "7. The State is also agreed to give compensation to the victims. It is stated in the affidavit of the State that Rs. 50,000 is being given for the fully damaged house, Rs. 25,000 for partly damaged house and Rs. 2 lakh each is being given to the damaged public institutions like schools, hospi- tals, etc. and Rs. 2 lakh each from the Chief Min- ister's Relief Fund to each of the families of the persons killed in the violence.
>
> x x x x
>
> 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 atti- tude on the matter and assess the damage of

37 (2009) 17 SCC 90
38 (2009) 17 SCC 87

those churches or other religious places and ren- der 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."

[emphasis supplied]

37. It is worthy to note that vide order dated 30.07.2012 the Court had reproduced the passage from ***Archbishop Raphael Cheenath S.V.D. v. State of Orissa and an- other***[39] and required the learned counsel for the State of Gu- jarat to inform the Court whether the State is contemplating any such scheme for repair or renovation of the religious places affected by the communal riots.

38. It is necessary to mention that in pursuance of the aforesaid order, a scheme has been framed by the State of Gujarat. The said scheme reads as under:

"GOVERNMENT OF GUJARAT
REVENUE DEPARTMENT
Resolution No. RHL/102012/SLP/15730/12/S.4

Sachivalaya, Gandhinagar
Dated : 18.10.2013

Read : 1. G.R. RD No. RHL/1070/60691/S4, dated 14.07.1970
2. G.R. RD No. RHL/2185/156/84/S4,

39 (2009) 17 SCC 90

dated 29.03.1986
3. G.R. RD No. RHL/2390/3456/54, dated 05.05.1991
4. G.R. RD No. RHL/102012/SLP/15730/12/S.4, dated 9.8.2012

PREAMBLE:

As per the assurance given on behalf of the State Government in SLP (Civil) No. 15730 of 2012, filed by the Government of Gujarat, as contained in order dated 30th July 2012, passed by the Honourable Supreme Court, the State Government constituted a committee for formulation of policy for giving *ex gratia* assistance and to prepare a draft of such policy for consideration by the Government of Gujarat vide Revenue Department Resolution dated 9th August 2012, as referred to above.

The above Committee's meetings were held on 20th August, 2012, 4th September, 2012 and on 21st February, 2013. The Committee went into various questions involved in formulating such a policy and also considered other Government Resolutions issued earlier with reference to subject matter. After detailed deliberations and considerations as above, the Committee took the view to suggest for providing *ex gratia* assistance to all religious places damaged/destroyed in communal riots as per the existing policy of the State Government, as reflected in above referred Government Resolutions. The Committee's conclusion reads as under:

> "The policy of the past, treating the public places of worship i.e. temples, mosques and churches as houses for the purpose of grant of subsidy and/or loan, may be applied to the public places of worship damaged/destroyed during 2002 riots, subject to the conditions that they are not located in the middle of roads or at unauthorized places: FIR lodged:

and assistance to be given up to the amount granted for damaged house as per the existing G.R. limited to the actual cost of repairing/restoration of that public places of worship, whichever is less."

RESOLUTION:

After careful consideration, the State Government accepts the recommendations of the Committee and decides to pay *ex gratia* assistance up to Rs. 50,000/- to all religious places damaged/destroyed during the communal riots at par with the similar assistance which have been provided by the State Government for damaged/destroyed houses subject to the following conditions:

(i) No financial *ex gratia* assistance would be available/sanctioned to unauthorized religious places;

(ii) No religious place, if located in the middle of the public road or at any unauthorized place, shall be given any *ex gratia* assistance;

(iii) For availing the financial assistance under this Scheme, it is necessary that an FIR should have been lodged at the relevant point of time in the nearest police station;

(iv) The person/persons claiming such *ex gratia* assistance shall have to satisfy the District Collector of the District in which such religious place is situated about the ownership and/or administration rights of religious places concerned so as to ensure that any person unconnected with a religious place may not claim and receive *ex gratia* financial assistance under the Scheme. The decision of the District Collector in this behalf shall be final; and

(v) The *ex gratia* financial assistance given under this Scheme shall be up to Rs. 50,000/- and limited to the actual cost of repairing/ restoration, whichever is less.

> The expenditure on this account should be met under the budget head Expenditure Demand No. 82, Major Head 2235-60-200-02 Relief to persons affected by riots.
>
> By Order and in the name of the Governor of Gujarat."

39. The said scheme has to be appreciated on the anvil of the directions issued in ***Prafull Goradia*** (supra) and ***Arch- bishop Raphael Cheenath S.V.D.*** (supra). In the first case, the two-Judge Bench has opined that object of Article 27 is to maintain secularism and the said Article would be violated if the substantial part of the entire income tax collected in In- dia, or a substantial part of the entire central excise or the customs duties or sales tax, or a substantial part of any other tax collected in India, were to be utilized for promotion or maintenance of any particular religion or religious denomi- nation. The Court has made a distinction between the rela- tively small part and the substantial part. In ***Archbishop Raphael Cheenath S.V.D. v. State of Orissa and an- other***[40] the Court emphasized on the creation of atmosphere where there shall be complete harmony between the groups of people and the duty of the State to have discussions with the various groups to bring about peace and give possible

40 (2009) 17 SCC 87

help to the victims. As stated earlier, in ***Archbishop Raphael Cheenath S.V.D. v. State of Orissa and an- other***[41] the Court directed the Government to formulate a scheme regarding the religious places.

40. In the present case, similar direction was given and the State has framed the scheme. On a close scrutiny of the scheme, we have noticed that the Government has fixed the maximum amount under the caption of *ex gratia* assistance and also conferred the power on the District Collector of the Districts where religious places are situated to determine about the ownership or administration rights of religious places concerned. There are certain conditions precedent for claiming the amount. The terms and conditions which are incorporated in the scheme are quite reasonable. It is also worthy to note that while fixing the maximum limit, the Gov- ernment has equated the same with houses which have been given the assistance. When the individual's grievances per- taining to property has been conferred the similar assistance, we are disposed to think, the assistance rendered for repair- ing/restoration of public places of worship will come within

the guidelines of ***Prafull Goradia*** (supra) and ***Archbishop***

41 (2009) 17 SCC 90

Raphael Cheenath S.V.D. (supra). Therefore, we accept the said scheme.

41. The claimants who fulfil the conditions of the scheme shall approach the authorities therein within eight weeks and the said authorities shall determine the same within three months from the receipt of the claims. If any party is ag- grieved by the denial of the benefit, he can take appropriate steps in accordance with law.

42. In view of the aforesaid analysis, the judgment and or- der passed by the High Court is set aside and the appeal is disposed of in the above terms. There shall be no order as to costs.

.....CJI
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi; August
29, 2017.