

REPORT
OF
THE COMMISSION OF INQUIRY
INTO
THE COMMUNAL DISTURBANCES
AT
BHIWANDI, JALGAON AND MAHAD
IN MAY 1970

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VOLUME V — PART V
(CHAPTERS 80 TO 99)

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ABBREVIATIONS

Addl.D.M.	..	Additional District Magistrate.
Addl.I.G.P.	..	Additional Inspector-General of Police.
Addl. S.P.	..	Additional Superintendent of Police.
A.H.P.C.	..	Armed Head Police Constable.
A.I.R.	..	All India Reports Series.
A.P.C.	..	Armed Police Constable.
Asst.I.G.P.	..	Assistant Inspector-General of Police.
Asst.S.P.	..	Assistant Superintendent of Police.
Bom.L.R.	..	Bombay Law Reporter.
B.S.F.	..	Border Security Force.
Cal.	..	Calcutta.
Cal.L.J.	..	Calcutta Law Journal.
Ch.	..	Chancery.
C.P.I.	..	Circle Police Inspector.
Cr.L.J.	..	Criminal Law Journal.
Cr.P.C.	..	The Code of Criminal Procedure, 1898.
D.I.	..	Detective Inspector.
D.I.G. (Crime)	..	Deputy Inspector-General of Police (Crime & Railways).
D.I.G. (Int.)	..	Deputy Inspector-General of Police (C.I.D.) (Intelligence).
D.M.	..	Collector and District Magistrate.
D.Ms.	..	Collectors and District Magistrates.
Dy.S.P.	..	Deputy Superintendent of Police.
D.S.B.	..	District Special Branch.
D.S.I.	..	Detective Sub-Inspector.
H.C.	..	Head Constable.
H.P.C.	..	Head Police Constable.
I.A.	..	Indian Appeals.
I.L.R.	..	Indian Law Reports.
I.P.C.	..	The Indian Penal Code.
I.R.	..	Irish Reports.
Jamaat-E-Islami	..	Jamaat-E-Islami-E-Hind.
Jan Sangh	..	Bharatiya Jan Sangh.
L.C.B.	..	Local Crime Branch.
L.I.B.	..	Local Intelligence Branch.
L.R.	..	Law Reports Series.
Mad.	..	Madras.
M.T.M.	..	All-India Majlis Tamir-E-Millat.
Mushavarat	..	All-India Muslim Majlis-E-Mushavarat.
P.C.	..	Privy Council.
P.C.	..	Police Constable.
P.I.	..	Police Inspector.
P.S.I.	..	Police Sub-Inspector.
R.S.S.	..	Rashtriya Swayam Sevak Sangh.
R.T.M.	..	Shree Ram Tarun Mandal.
R.U.M.	..	Rashtriya Utsav Mandal.
S.B.	..	Special Branch.
S.C.	..	Supreme Court.
S.D.P.O.	..	Sub-Divisional Police Officer.
S.P.	..	Superintendent of Police.
Ss.P.	..	Superintendents of Police.
S.P.I.	..	Sub-Inspector of Police.
S.R.P.	..	State Reserve Police.
S.R.P.C.	..	State Reserve Police Constable.
S.R.P.F.	..	State Reserve Police Force.

PART V

THE MAHAD DISTURBANCES

CHAPTER 80
THE MAHAD INQUIRY

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- 80.3 The proceedings.
- 80.8 Officers during the relevant period.
- 80.9 The case of the Hindu parties.
- 80.12 The case of the Muslim parties.
- 80.15 The case of the Executive Magistrates and the District Police Officers.
- 80.16 The case of S. B. Savant.

CHAPTER 80

THE MAHAD INQUIRY

Communal disturbances in the Kolaba District

80.1 In the afternoon of May 8, 1970 communal disturbances broke out in the town of Mahad. The Police opened fire twice. The disturbances were put down that very evening. Though no lives were lost, in all six Muslims and nine Hindus were injured. Out of them, one Muslim and four Hindus were injured in the police firings. The Circle Police Inspector and two constables also received injuries. The estimated total loss suffered by the Muslims was Rs. 2,82,493 and that suffered by the Hindus was Rs. 17,610.

80.2 From Mahad the disturbances spread rapidly to other parts of the Kolaba District until in all fifty-three other places in the Kolaba District were affected.

The proceedings

80.3 In all 24 witnesses were examined in the Inquiry relating to the Mahad disturbances. These witnesses were :—

- (i) 4 witnesses called by the Government—G.Ws. 1, 2, 4 and 11,
- (ii) 12 witnesses called by the Executive Magistrates and Police Officers of the Kolaba District—P.W. 97 to P.W. 107 and P.W. 118,
- (iii) 1 witness called by the Jamiet-ul-Ulema, Maharashtra State—J.U.(M.)W. 2,
- (iv) 3 witnesses called by the fifteen Muslims from Mahad who had filed their appearance—M.M.W. 1 to M.M.W. 3, and
- (v) 4 witnesses summoned by the Commission—C.W. 29 to C.W. 32.

80.4 The Commission issued notices to the Shiv Sena Chief, Bal Keshav Thackeray, Dr. Dattatraya Pitamber Mehta *alias* Baburao Mehta and Surendranath Govind Tipnis setting out the allegations made against them and giving them an opportunity to appear before the Commission and lead evidence if they so desired. Bal Thackeray chose not to appear but Dr. Mehta and Tipnis appeared before the Commission and their evidence was recorded.

80.5 The documentary evidence dealing exclusively with the Inquiry into the Mahad disturbances consisted of 230 Exhibits, namely :—

- (i) 64 from the possession of the Government of Maharashtra—Exhibits G. 211 to G. 270 and G. 332 to G. 335,
- (ii) 132 from the possession of the Executive Magistrates and Police Officers—Exhibits P. 1061 to P. 1191 and P. 1533,

- (iii) 11 from the possession of the fifteen Muslims from Mahad—Exhibits MM. 1 to MM. 11,
- (iv) 4 from the possession of the Jamiet-ul-Ulema, Maharashtra State—JU (M) 6 to JU (M) 9, and
- (v) 19 from the possession of or in the course of evidence of the witnesses examined by the Commission—Exhibits Nos. 69 to 87.

80.6 The recording of the evidence in this particular Inquiry took 24 days. The total number of pages of oral evidence recorded by the Commission was 271 pages and affidavits running into 204 pages were made part of the deposition of witnesses. The written arguments ran into 285 pages and oral arguments for clarifying them took 10 days.

80.7 The Commission visited Mahad four times for local inspection, namely, on June 22, 1970, May 27, 1972, June 5, 1972 and November 11, 1972.

Officers during the relevant period

80.8 The officers whose names are mentioned below were holding at the relevant time the office specified against their respective names :—

- (1) L. A. Savnur, Collector and District Magistrate, Kolaba District (P.W. 98).
- (2) D. C. Joshi, Tahsildar and Taluka Executive Magistrate, Mahad, from June 12, 1968 to April 24, 1970 (P.W. 102).
- (3) S. H. Attarde, Tahsildar and Taluka Executive Magistrate, Mahad, from April 24, 1970 (P.W. 104).
- (4) A. A. Khan, Superintendent of Police, Kolaba District (P.W. 97).
- (5) A. W. Khan, Deputy Superintendent of Police, S.D.P.O., Mahad.
- (6) P. R. Saluke, Circle Police Inspector, Mahad Division (P.W. 105).
- (7) R. S. Salvi, Inspector of Police (Intelligence) (C.I.D.) (P.W. 107).
- (8) M. B. Vichare, Sub-Inspector in-charge Mahad Town Police Station from June 1969 to April 22, 1970 (P.W. 101).
- (9) L. R. Gadkar, Sub-Inspector in-charge Mahad Town Police Station from April 23, 1970 to April 28, 1972 (P.W. 106).

The case of the Hindu parties

80.9 The Hindu parties who have pleaded a positive case in respect of the Mahad disturbances are the Hindus from Mahad who appeared through Mr. A. K. Chaphekar, the Maharashtra Pradesh Bharatiya Jan Sangh and the Maharashtra Pradesh Hindu Mahasabha. In brief, their case is as follows :—

There was an ancient temple of Mahikavati in Mahad situate at the western approach of the town. On January 17, 1970 the Shiv Sena Chief, Bal Thackeray, visited Mahad and after satisfying him-

self that there was a carving of Ganpati on the 'Mahirap' of the said temple, he performed a short religious ceremony and hoisted a Bhagwa flag on the temple. On an inquiry being made by the Police, the Muslims stated that they had no complaint to make. Some days thereafter it was reported in the newspapers that the Muslims had decided to hand over to the Government the site on which the said temple stood. A few days later the Bhagwa flag hoisted on the said temple by Bal Thackeray was removed by some unknown persons and this news created a stir in the town. Thereupon one Anna Pawar went to the spot and hoisted another flag on the said temple. At the Mahad Town Police Station Anna Pawar was questioned why he had hoisted the said flag and his reply was that the Police should make inquiries why the flag put up by Bal Thackeray had been removed at the first instance. He was thereupon released and from that time a constant police bandobast was kept at the said site. It was thereafter reported that the Government was looking into the question of the title to the site on which the said temple stood and the people thereupon took it that this chapter was closed.

Soon thereafter communal articles began appearing in a periodical called 'Maharashtra Muslim' and the Urdu daily 'Inquilab' with respect to the said temple. The Shiv Jayanti celebrations which took place on May 7, 1970 passed off peacefully, but in the afternoon of May 8, 1970 the Bhagwa flag was removed from the said temple by some Muslims who beat up the police constables on duty at that time. Within a short time thereafter mobs of Muslims, many of them armed with lethal weapons, began assaulting the Hindus and systematically setting fire to the Hindu houses.

80.10 According to the Hindu parties, the communal peace and harmony of Mahad was deliberately disturbed by the Muslims by forcibly removing the said flag from the said temple, without any cause, on the day following the attack on the Shiv Jayanti procession in Bhiwandi.

80.11 It is necessary to refer to certain allegations made in the affidavit (affidavit No. 405) of Durgaprasad Prasannakumar Bakhale who had served the Hindu Mahasabha in various capacities including as the General Secretary of the Bombay Provincial Hindu Mahasabha and the President of the Bombay District Branch of the Hindu Mahasabha and who was at the date of the filing of the said affidavit, namely, on September 8, 1970, one of the Vice-Presidents of the Bombay Branch of the Hindu Mahasabha. It was alleged in the said affidavit that the organizations responsible for provoking the Mahad disturbances were the Muslim League, the All India Muslim Majlis-E-Mushavarat and the All-India Majlis Tameer-E-Millat, all of which, it was alleged, had a good following amongst the Muslims of Mahad. The said affidavit further mentioned the names of twenty-two persons, including that of Dr. Mrs. Qamar Kazi (M.M.W. 1), who according to Pandit Bakhale were responsible for provoking the said disturbances. He has further alleged in his said affidavit that the said disturbances were premeditated, pre-planned, well-organized and were a part and parcel of the conspiracy

to rise in arms against the Hindus, just as at Bhiwandi, in order to achieve the Muslim goal of Pan Islam. It may be mentioned that Pandit Bakhale did not choose to step into the witness-box and to subject himself to cross-examination nor led any evidence nor made any attempt to prove the allegations made in his said affidavit, and apart from Dr. Mrs. Qamar Kazi, who gave evidence before the Commission, nothing was ever heard in the course of the Inquiry about the other persons whose names were mentioned in Pandit Bakhale's said affidavit.

The case of the Muslim parties

80.12 The Muslim parties who have pleaded a positive case with respect to the Mahad disturbances are the Muslims from Mahad who appeared before the Commission first through Mr. H. A. Solkar and thereafter through Mr. A. M. Salik, and the Maharashtra State Muslim League.

80.13 Briefly summarized, the case of the Muslim parties is as follows :—

There was a mosque known as the Jumma Mosque and a Muslim cemetery on a plot of land bearing survey No. 196A, Hissa No. 1, and City Survey No. 337, situate at the western approach of the town. The said mosque and cemetery were in the use, occupation and possession of the Muslims of Mahad for many centuries and the name of the Muslim Jamaat had been entered in the Record of Rights and in the other revenue records as the owner of the said property. The said mosque being in a dilapidated condition was being used only for the 'Janaza' prayers, that is, the after-death prayers, and there had been no interference with the Muslim community's use, occupation and possession of the said property from any Hindu or any member of any other non-Muslim community. In 1960 or 1961 the Mahad Municipality claimed the said plot of land, which claim was opposed by the Muslim community and ultimately the City Survey Officer and Mamlatdar, Mahad, rejected the Municipality's said claim and upheld the rights of the Muslims after a regular inquiry held by him.

In a public speech made by the Shiv Sena Chief, Bal Thackeray, at Chowpatty in Bombay on November 2, 1969 a claim was made for the first time that the said mosque had been once a Hindu temple known as the Mahikavati Temple and that the Hindus were not allowed by the Muslims to break coconuts there. In the course of the said speech Bal Thackeray declared that he would himself visit Mahad for breaking a coconut at the said mosque and that if anybody obstructed him, he would break his head. Bal Thackeray's said speech was reported in several newspapers and as a result thereof ill-feelings were created between the Hindus and Muslims of Mahad. A branch of the Shiv Sena was opened in Mahad and several Shiv Sena and Jan Sangh workers started taking an interest in the matter. Articles began appearing in newspapers and periodicals purporting to contain historical accounts of the Mahikavati Temple which were false

and without any basis in facts. The said articles further aroused communal feelings amongst the Hindus of Mahad. The Muslims of Mahad, therefore, on December 19, 1969 made a representation to the Chief Minister about the tension which was created in Mahad over the said mosque and the apprehensions felt by the Muslims. Bal Thackeray visited Mahad on January 17, 1970, broke a coconut at the said mosque and hoisted his party flag thereon after throwing 'gulal' on the Muslim graves. He also led a procession of the Shiv Sena and Jan Sangh workers through the Muslim locality when abusive and anti-Muslim slogans were shouted and thereafter addressed a public meeting. Though the Police and the authorities did not take any action in the matter, because of the restraint and tolerance shown by the Muslims, the incident passed off peacefully. The Police made the Muslims sign a writing that they did not desire to take any action against Bal Thackeray or his supporters for what had been done on January 17, 1970.

Thereafter the Shiv Sena and the Jan Sangh workers several times mischievously removed the flag from the said mosque with a view to create communal disturbances in Mahad. Every time, however, such disturbances were avoided because of the tolerance and restraint shown by the Muslims. The Muslims made several representations to the Chief Minister and to the District authorities, but no action was taken by them. On February 15, 1970 Bal Thackeray and his supporters tried to visit the said mosque for the purpose of putting up a pillar on the said site, but he was prevented by the Police from doing so by the issue of a prohibitory order under section 144 Cr.P.C. Bal Thackeray thereafter threatened to hold a public meeting in Mahad in breach of the said prohibitory order on his return from his Ratnagiri tour. On account of the ill-feelings created between the two communities over the said mosque and by reason of the high tension prevailing at Mahad, the Muslim Jamaat offered to surrender the said plot of land to the Government of Maharashtra by its letter of surrender dated February 19, 1970. In spite of the surrender of the said plot of land, the Shiv Sena and the Jan Sangh workers continued their anti-Muslim propaganda and held a meeting at Mahad on February 22, 1970 which was addressed by Shiv Sena workers from Bombay. The Hindus of Mahad were dissatisfied with the surrender of the said plot of land as they felt that their plans for constructing a temple of Mahikavati on the said plot of land had been thereby frustrated. Some Hindus openly declared that they would take forcible and illegal possession of the said mosque and thereupon the Sub-Divisional Magistrate, Mahad, adopted proceedings under section 145 Cr.P.C. against the representatives of both communities and appointed the Circle Inspector of Mahad as the receiver. The receiver took possession of the said plot of land on April 16, 1970 from the trustees of the said mosque.

On May 6, 1970 communal disturbances took place at Goregaon, a small town about 12 miles from Mahad, in the course of which

one Muslim was murdered and another seriously injured. This incident created communal tension in Mahad and made the situation explosive. In spite of this, no special bandobast was kept at Mahad and no preventive arrests were made to forestall an outbreak of communal disturbances. On May 8, 1970 the news about the Bhiwandi disturbances was received in Mahad and provided the Shiv Sena and the Jan Sangh workers who wanted to start communal disturbances at Mahad with an excuse. They, therefore, spread a false rumour that the Shiv Sena flag on the said mosque had been removed by the Muslims and that the Muslims had insulted the Hindus in general and the Mahikavati Devi in particular, though the said flag had not been removed by anyone and this rumour was only an excuse invented to create trouble. The disturbances started at 2 p.m. with the burning of the Muslim properties situate in Hindu localities followed shortly by the burning of the Muslim properties in the Muslim locality. A few constables and police-officers arrived on the scene after about two hours and opened fire on the Hindu mob, but they could not control the mob and it was only at about 5-30 p.m. that the disturbances were brought under complete control after the arrival, along with the S.R.P., of the Deputy Superintendent of Police, who had been camping at Goregaon and who had been informed about the disturbances by a special messenger sent by the Muslims.

80.14 According to the Muslim parties, the causes of the Mahad disturbances were the dispute raised by Bal Thackeray with respect to the said mosque and the cemetery, and the communal ill-feeling and disharmony created by his said speech made on November 2, 1969 culminating in his visit and hoisting of the Shiv Sena flag on the said mosque on January 17, 1970 and the anti-Muslim and abusive slogans shouted by the processionists and the communal speeches made on that day. According to them the local Shiv Sena and Jan Sangh workers also took an active part in creating ill-feelings between the two communities over the said mosque, for they had planned to start communal disturbances at Mahad whenever an opportunity became available. The Muslim parties have further alleged that a Hindu mob armed with deadly weapons could not have collected within such a short time after the false news of the removal of the flag started spreading, unless this had already been pre-planned. They have further alleged that the authorities, though informed from time to time about the situation and though they themselves had sufficient information about the situation both from Intelligence Branch and from the representations made by the Muslims, did not take any action to prevent the communal disturbances and did not keep sufficient police bandobast at Mahad in spite of the explosive situation and the communal disturbances which took place at Goregaon only two days earlier and did not prosecute Bal Thackeray and his supporters and several Jan Sangh and Shiv Sena workers who had committed acts of trespass and had resorted to violence and committed several other acts calculated to create communal hatred and disharmony.

The case of the Executive Magistrates and the District Police Officers

80.15 According to the Executive Magistrates and the Police-Officers of the Kolaba District, the Mahad disturbances were the result of the removal by two Muslims of the Bhagwa flag which had been hoisted on the structure which according to the Muslims was an old mosque and according to the Hindus an old temple.

The case of S. B. Savant

80.16 Shankarrao Babajirao Savant (C.W. 29) was at the relevant time the M.L.A. from Mahad. He had independently filed an affidavit before the Commission, namely, affidavit No. 67. In view of the statements made in his affidavit the Commission examined him as a witness. He thereafter asked for permission to appear in person before the Commission and to take part in the hearings, which permission was granted to him. It is only fair to mention that his appearance before the Commission and his cross-examination of the witnesses has been responsible for a number of facts coming on the record which would have otherwise not seen the light of day.

80.17 S. B. Savant's case is that the plot of land in question belonged to the Mahad Municipal Council and not to either the Hindus or the Muslims and although at one time a temple of Mahikavati stood on the said plot of land, by reason of desecration the Hindus had neglected the said temple for nearly three centuries and that there was no mosque on the said plot of land, though the Muslims had at one time used the said plot of land as a burial-ground. According to him, 'Mahikavati' was only an excuse for unscrupulous politicians and that the best way of ending the trouble was for the Government to take possession of the said plot of land and put it to some secular use. He has alleged that the Police and the administration have shown great ineptitude and unimaginativeness in handling the communal trouble in Mahad; as shown by their gullibility in trusting the word of Bal Thackeray that he would not enter the said structure on January 17, 1970, their failure to stop him from entering it although they had more than 600 S.R.P. men present, their promulgation of a prohibitory order under section 144 Cr.P.C. prohibiting the entry of Bal Thackeray and his followers and supporters into the town of Mahad when such an order was not necessary, their lifting the said ban under threats from Bal Thackeray when the communal tension was at its highest, their failure to assess the likely impact on Mahad of the Goregaon riot and the Bhiwandi disturbances and their consequent failure to replenish the Police Force at Mahad after some of it had been diverted to Goregaon, and their failure to take preventive action in time against trouble-makers which made the spread of a social boycott of the Muslims in the Kolaba District possible. He has further contended that the Shiv Sena, the P.S.P., the Jan Sangh and the Congress(O) had been acting in concert so far as Mahad was concerned with the aim of killing the secularism of the Congress (R), and that

the said parties wanted to wean away the Hindus from the Congress (R) by telling them that the Congress (R) was anti-Hindu and to wean away the Muslims from it by telling them that it was unable to protect them from such dire measures as a social boycott. He has further alleged that in Mahad the said parties were constituent units of a united front known as the Shahar Seva Samiti which had been operating in the town of Mahad for a number of years. According to him, though the State and the all-India leadership of the P.S.P. was secular, the same was not the case with the P.S.P. in Mahad which had only one idea, namely, that of running down the Congress (R) and for which purpose it co-operated with any party, whether rightist or leftist, communal or non-communal.

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CHAPTER 81

MAHAD

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CHAPTER 81

MAHAD

Topography

81.1 The town of Mahad is situate in the District of Kolaba at a distance of about 111 kilometers from Alibag, the District Headquarters. The offices of the Collector and the District Magistrate and of the Superintendent of Police are situate at Alibag as also the court of the District and Sessions Judge, Kolaba. The town of Mahad is the Headquarters of the Mahad Sub-Division which consisted in 1970 of nine Talukas including the Talukas of Mahad, Roha, Mangaon, Poladpur, Murud, Shriwardhan and Mhasla.

81.2 The area of Mahad town is 1.5 square miles. The town lies on the right bank of the river Savitri. At the western approach of the town there is a small, barren, uncultivated mound overlooking the confluence of the Savitri and the Gandhari. On the top of the mound there is a dilapidated, roofless structure which became or, rather, was made to become, a cause of tension and controversy between the two communities. For the above reason this property is referred to in this Report as 'the disputed property' or 'the disputed structure', depending upon whether the entire property is being referred to or only the dilapidated structure, except where the context or the subject-matter required a different mode of reference. At the foot of the said mound on its western side is an octroi post. This point is known as Bunder Naka. Near the confluence of the two rivers is a bunder or jetty still used by very small country-craft (C.W. 47/10/3969; P.W. 97/7/3224), which must have played an important role in the economic and commercial life of Mahad in the earlier days before the advent of other means of communication.

81.3 Mahad can be approached by several roads. The first point of entry into Mahad for one approaching from Bombay is from Kemburli Naka where the road, branching off to the right from the Bombay-Ratnagiri Highway, leads to Mahad past the Octroi Naka. Two other approach roads are from the north, one being the Raigad Road and the other the S. T. Stand Road near the eastern end of the town. The eastern-most point of the town is Shedhav Naka. Near Shedhav Naka is Dr. B. R. Ambedkar College, which was established in the year 1961 by the People's Education Society.

81.4 There is only one police-station in Mahad, namely, the Mahad Town Police-Station. The Mahad Town Police-Station and the Tahsildar's office are situate in the south-west part of the town. There was no wireless at the Mahad Police-Station prior to the disturbances. It

was installed after the disturbances broke out in the Kolaba District (P.W. 97/26/3237). In the centre of the town is the Azad Maidan where public meetings are held.

History

81.5 The following extract from the Maharashtra State Gazetteers, Kolaba District, Revised Edition, 1964, at pages 851 to 852, which is an almost verbatim reproduction of the passage at pages 344 and 345, Volume XI, Kolaba and Janjira, of the Bombay Presidency Gazetteer of 1883, gives a clear idea of the history of Mahad and its importance as a centre of commerce from the earliest days :—

“Mahad is said to have been once known by the name of Mahikavati (2). Its situation at the head of the main channel of the Savitri, and the group of early (about A.D. 100) Buddhist caves in Pale hill about two miles to the north-west of the town, and two groups equally old at Kol about a mile to the south, mark Mahad as an early trade centre. The caves are considered to date from the first to the third century after Christ, and the town, or more properly the suburb, of Pale, seems to be mentioned in Ptolemy (A.D. 150) as Ṛalipatna, and in the Periplus about a hundred years later, as Palaiapatmai.

In 1538 De Castro mentioned it as a large town with a great trade in wheat. The Savitri was also called the river of honey, because honey was a great article of trade. During the latter part of the seventeenth century its nearness to Rayagad, Shivaji's capital, increased the importance of Mahad. Shivaji often lived at Mahad. In 1651, a party of troops in the interest of the Moghals and under the command of one Baji Samraj, attempted to make Shivaji prisoner, but he anticipated the surprise and attacked the party near the bottom of the Ghat and put them to flight. In 1656, by building the fort of Pratapgad just beyond the southern limit of Kolaba, Shivaji gained command of the Par Pass leading from the Deccan to Mahad, and secured a retreat to the Konkan. In 1682 when Dadaji Raghunath retired defeated from Janjira, the Sidi made constant inroads into the neighbourhood of Mahad, destroying cows, carrying off women, and burning villages. He even forced his way into the town of Mahad and captured Dadaji Raghunath's wife. In 1771 Forbes found Mahad a fortified, large and populous town. In 1796 Nana Phadnis, unable to prevent the accession of Bajirav, fled to the Konkan, and at Mahad collected an army of 10,000 men. In the month of October 1796 Nana concluded a treaty with the Nizam on the one hand and the English on the other. Under this treaty, which is known as the treaty of Mahad, Bajirao II was enthroned as Pesva and Nana Phadnis returned to Poona as Minister. In 1802, when Holkar occupied Poona, Bajirav II fled with 6,000 to 8,000 men to Rayagad and thence to Mahad, and took refuge in the fortress of that place. From Mahad Bajirav despatched letters to the Bombay Government, requesting that ships

might be sent to convey him and his followers to Bombay. He was anxious to send his family, and the families of his attendants to Suvarnadurg in Ratnagiri; but the commandant of the fort refused to receive them. Khanderav Raste, the Governor of Sarsubhedar of Konkan, joined him at Mahad from Bassein. On hearing that Holkar was on his way down the Par Pass, the Pesva fled to Suvarnadurg, while some of his followers took refuge in the English factory at Fort Victoria or Banakot. On the 24th of April 1818 the force under Lieutenant-Colonel Prother seems to have occupied Mahad without opposition. In 1820 Mahad is described as standing at the foot of a principal pass through the mountain leading to Poona, and as the emporium of the Banakot river where all merchandise whether leaving or entering the river was embarked. There was a large traffic from the Deccan. Mahad is a trade centre of much importance."

81.6 The second foot-note at page 851 of the 1964 Gazetteer, that is, the foot-note to the opening sentence of the passage reproduced above, namely, 'Mahad is said to have been once known by the name of Mahikavati', is a verbatim reproduction of the first foot-note at page 344 of the 1883 Gazetteer and is as follows :—

"2 Mr. A. T. Crawford, C.S. At the junction of the Savitri and the Gandhari is a mosque still known as the Maika or Mahika mosque which occupies the site of and is probably built of the stones of a Hemadpanti temple. The mosque seems to have been turned into a battery and to have undergone a cannonade from down stream."

The place referred to in the above foot-note is the disputed structure.

Communal geography

81.7 In May 1970 the population of Mahad was about 13,650 out of which 10,150 were Hindus and 3,500 were Muslims [P.W. 97/1(2)/3212(1); G.W. 11/1(2)/3398(1)].

81.8 Appendix P to this Report is a sketch of Mahad showing the incidents which took place in Mahad during the communal disturbances on May 8, 1970. This sketch also gives a clear picture of the communal geography of Mahad. There are two Muslim localities in Mahad, one of them at the western end of the town lying between Bunder Naka and Salwad Naka, the other, known as Kakar Tala Mohalla, situate in the north-eastern part of the town near the S. T. stand. In 1970 there were about twenty-five Muslim houses in Kakar-tala Mohalla. Kakartala Mohalla is surrounded by Hindu localities, but none of the Muslim houses in this 'mohalla' was in any way affected or damaged in the disturbances. Shedav Naka is a mixed locality. No incident took place in this locality also during the disturbances (P.W. 105/14/3426, 16/3426). On the main road, namely, the Mahatma Gandhi Road, which runs west to east, are shops belonging both to Hindus and Muslims. In Gadital, a locality situate in the middle of the town, are two dry fish godowns belonging to the

Muslims, which were burnt down in the disturbances.

81.9 There are two Muslim Jamaats in Mahad, one of the Muslims of Kakartala Mohalla, known as the Muslim Kakartala Jamaat, and the other of the Muslims of the other locality, known as the Muslim Jamaat, Mahad. The Muslim Jamaat, Mahad, had more than 1,000 members in May 1970. The Kakartala Muslims offered their Jumma or Friday noon prayers in the Sultan Jamai Masjid situate near their 'mohalla', while the Muslims in the western part of the town offered their Jumma prayers in the Sultan Masjid also known as the Sultan Jamai Masjid situate near Hafiz Tank on the other side of Kajalpura. The old structure of the Sultan Jamai Masjid was pulled down and the present mosque constructed in its place in 1957 (M.M.W. 2/1/3381, 3/3383; M.M.W. 3/11/3390, 13/3391).

81.10 In the north-west part of the town is a Dargah known as the Shah Bahiri Dargah, held in veneration not only by the Muslims but also by the Hindus (P.W. 101/22/3357). Opposite the disputed structure is another Dargah known as the Navre Pir Dargah. In 1936 the old structure of the Navre Pir Dargah was pulled down and the present structure constructed in its place (M.M.W. 3/13/3391).

81.11 The old Muslim burial-ground was situate in the open space on all sides of the disputed structure. The new Muslim burial-ground is situate in Village Gardharpala outside the municipal limits of the Mahad Municipal Council. About 20 years ago when S. B. Savant (C.W. 29) was the President of the Mahad Municipality the Mahad Municipality constructed a small one-room structure on the land of the Gandharpala burial-ground as also a 'kutchra' approach road to the cemetery (M.M.W. 3/16/3392-3). The route to the new burial-ground goes past the disputed property (C.W. 29/31/3266).

81.12 Only one Hindu temple has featured prominently in this Inquiry. It is the Veereshwar Temple situate to the south-west of the Azad Maidan. Another temple which may be mentioned is the Jak Mata Temple near the Mahad Town Police-Station.

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CHAPTER 82
THE POLITICAL AND COMMUNAL BACKGROUND

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- 82.5 The Muslim role in Mahad politics
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CHAPTER 82

THE POLITICAL AND COMMUNAL BACKGROUND

The Assembly Seat

82.1 The Congress and the Socialists were the chief contenders in Mahad for election purposes. In 1946 S. B. Savant had contested the Assembly elections as an independent candidate and had lost. In 1957 Nana Purohit was elected to the Assembly on the P.S.P. ticket defeating the Congress candidate G. A. Karmarkar. In the 1962 general elections Savant, who had stood on the Congress ticket, and Salunkhe of the P.S.P. each secured an equal number of votes and on the drawing of lots, Savant was declared elected. Savant's election was, however, set aside by the High Court and in the resulting by-election, which took place in 1965, Savant was re-elected on the Congress ticket. In the 1967 general elections Savant, who had again contested on the Congress ticket, retained his seat by defeating K. R. Pawar who had stood on the P.S.P. ticket (G.W. 11/1(2)/3398(1) and C.W. 29/ 17/ 3262).

S. B. Savant

82.2 Shankarrao Babajirao Savant belonged to the Ratnagiri District. He qualified in law and in about 1937 started his practice at Mahad. In 1945 the British Government conferred upon him the title of Raosaheb. He renounced the said title in 1947 as a protest against the Partition of India. He soon became active in municipal politics and was thrice elected the Municipal President—in 1943, 1952 and 1957. After his election for the first time as Municipal President he ventured forth into provincial politics and contested the Bombay Legislative Assembly elections as an independent candidate, but lost. In 1956 he joined the Samyukta Maharashtra Samiti and in the end of 1960 after the bifurcation of the erstwhile State of Bombay he joined the Congress. Thereafter, as mentioned in paragraph 82.1 above, he successfully contested on the Congress ticket the elections to the Maharashtra Legislative Assembly. In the 1971 mid-term Parliamentary elections he was elected to the Lok Sabha from the Kolaba constituency [C.W. 29/1(2)/3252(1), 17/3262; C.W. 47/1(8)/3965(4)].

82.3 Savant appeared to have a strong following and to have evoked an equally strong opposition and personal animosity in Mahad. The affidavits and the evidence of witnesses showed that there was considerable personal animus between Savant and the local P.S.P. leader, S. G. Tipnis, between Savant and Dr. Mrs. Qamar Kazi, and between Savant and Dr. Baburao Mehta. There also appeared to be

considerable mutual dislike between Savant and the officers including A. A. Khan, S.P., Kolaba (P.W. 97), and Mahadeo Bhikaji Vichare (P.W. 101), the Sub-Inspector-in-charge of the Mahad Town Police-Station from June 1969 to April 22, 1970. The officers seemed to have felt that Savant was arrogant and was throwing his weight around too much, while Savant felt that the officers were not giving him the proper respect due to him as an M.L.A.

S. G. Tipnis

82.4 Surendranath Govind Tipnis, popularly known as Surba Tipnis, belonged during the relevant period to the P.S.P. and thereafter to the S.S.P. He was an influential political worker and leader in the Kolaba District and a political rival and opponent of S. B. Savant, and there existed considerable personal animosity between the two. Each has made allegations against the other, and the affidavit filed by Tipnis is for the most part a diatribe against Savant. In his affidavit Tipnis has at several places referred to Savant as a 'pseudo-erudite Pandit'. Tipnis comes from Mahad and belongs to the C.K.P. (Chandraseniya Kayastha Prabhu) caste and in 1926 became the President of the Mahad Municipality. He has alleged in his affidavit that differences arose between Savant and him because he did not support Savant when, after several members of the Bombay Legislative Assembly had resigned from the Legislature in pursuance of the call given by the Samyukta Maharashtra Samiti, the Samiti desired that R. B. Raut, who had also resigned from the Assembly, should contest the by-election, while Savant wanted to be a candidate himself. Another reason which Tipnis has given for the animus existing between himself and Savant is that in 1957 Tipnis had contested the election for the Bombay Legislative Assembly from the Mangaon constituency and that it would have been a straight fight between himself and the Congress candidate and he would have won, but for the fact that Savant set up his own candidate in order to defeat Tipnis, with the result that the Congress candidate secured about 22,000 votes, Tipnis about 17,000 votes and the candidate set up by Savant about 10,000 votes. He has further alleged in his affidavit that throughout his life he has acted on non-communal lines and cited examples of his non-communal mindedness, namely, throwing open public tanks for members of all communities including the untouchables, and providing an approach road to the Muslim burial-ground in Gandharpala Village when he was the Municipal President, and as a member of the Governing Board of the People's Education Society making a provision for teaching Urdu in the Dr. B. R. Ambedkar College founded in 1961 by the said Society. In his affidavit he has further alleged that while he had throughout acted on secular principles, Savant had always been communal-minded, that he joined the Hindu Mahasabha in 1941, supported the British during the Freedom Movement, that he was rewarded with the title of Raosaheb, and in 1946 along with other communalist members of the Marathi community

had formed a political party known as the 'Marathadi' to oppose the Congress. In this Inquiry the Commission is not concerned with the past political career or affiliations of any person unless it has a bearing upon any question arising before the Commission. It may none the less be mentioned that in his affidavit Tipnis has devoted 16 out of 28 paragraphs to elaborate upon the achievements of the members of the C.K.P. caste and of his own family and himself and has claimed that the said caste has become the leader of the non-Brahmin community; while so far as Savant's caste is concerned, one of the said paragraphs of his affidavit makes a slighting reference to it in passing. So far at least as the questions which arise before the Commission are concerned, the evidence shows that Savant has played a non-communal role, while the role played by Tipnis has been equivocal and not very happy.

The Muslim role in Mahad politics

82.5 There is no evidence of any branch of any Muslim political party or organization operating in Mahad. During the relevant period the Muslims of Mahad appear to have belonged to one of two groups, namely, the pro-Savant group and the anti-Savant group. The pro-Congress or rather the pro-Savant group, to which the witnesses Ebrahim Tayyabkhan Chichkar (C.W. 30) and Shujauddin Kamaluddin Kazi (C.W. 31) belonged, consisted mostly of the Muslims from Kakad-tala Mohalla. The witnesses, Dr. Mrs. Qamar Kazi (M.M.W. 1), Abdulla Shahabuddin Mapkar (M.M.W. 2) and Abdul Kadir Shaikh Hasan Kable (M.M.W. 3), were three of the leaders of the anti-Savant group.

Communal history

82.6 The relations between the Hindus and the Muslims of Mahad were very friendly and Mahad was not considered by the Government or the State Intelligence as a communally sensitive spot [M.M.W. 1/1 (9)/3317(4) ; C.W. 47/1(28)/3965(16-7) ; G.W. 11/1(2)/3398(1)] Until November 1969 the only communal issue which had raised its head in Mahad was the controversy which followed the Mahad Municipality's proposal of 1960 to convert the disputed property into a public garden, but this controversy did not result in any communal tension and died out soon after the said proposal was dropped by the Municipality and did not leave behind any communal bitterness. The said proposal and its effect will be considered in a separate chapter.

82.7 No communal riot took place in Mahad prior to May 8, 1970 except a minor riot which took place on July 6, 1967. On that day, a cart carrying kerosene oil tins caught fire accidentally in a Muslim Mohalla in Mahad. The Municipal fire-engine was sent for, but before it reached the spot, the fire was extinguished by the members of the public. When the fire fighter arrived, three Muslim residents of that Mohalla assaulted the driver, who was a Hindu. On learning about this, a number of Hindus and Muslims collected at Salvada Naka and started throwing stones and soda-water bottles at each other. The Police inter-

vened and the situation was prevented from taking a serious turn. The Police registered four riot cases, and the persons concerned therein were prosecuted and tried. It, however, appears that a compromise was arrived at between the two communities resulting in the witnesses not giving proper or correct evidence before the Court, as a result of which all these cases ended in acquittals [P.W. 97/1(3)/3212(1); G.W. 11/1(4)/3398(2)].

82.8 The said incident of July 6, 1967 is a classic example of how communal riots take place. The people of the said 'mohalla' appeared to have felt that the fire-engine took an unnecessarily long time to come. Some of them, therefore, belaboured the driver who happened to be a Hindu. A story soon spread that some Muslims had beaten up a Hindu. Thereupon Hindus and Muslims started collecting and throwing stones and soda-water bottles at each other, and there was a communal riot.

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CHAPTER 83
THE DISPUTED STRUCTURE

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CHAPTER 83

THE DISPUTED STRUCTURE

Location and description

83.1 On the right-hand side at the end of the approach road to Mahad from the Kemburli Naka stands a small uncultivated hillock or mound. It is situated at the western end of the town overlooking the confluence of the two rivers, the Savitri and the Gandhari. Its area is about 7 gunthas and it bears Revenue Survey No. 196A, Hissa No. 1 and City Survey No. 337. The land is assessed to land revenue, the assessment being formerly 3 pies and is now 2 paise. There is a dilapidated, roofless structure standing on this mound. A detailed description of this structure is given by S. B. Savant [C.W. 29/1(5)/3252(3-4)]. All that remains of the structure today are four dilapidated walls from 4 to 8 feet in height without any roof on them. The main entrance is on the eastern side with some carvings clearly visible on its framework. In the northern and southern walls are open spaces for side doors. The walls are of chiselled black granite stone which appear to have withstood for a number of centuries the ravages of man and nature. There is a barren drop on the southern side of the mound overlooking the confluence of the two rivers. The stone embankment on the periphery of the base of the mound is in ruins. No lime and mortar has been used in the construction of the walls, the massive stones being fixed in their place by niches in the lower layers with corresponding protruding portions in the upper layers, this being said to be a characteristic feature of the Hemadpanti architecture. There are graves all round the dilapidated structure. As appears from the report dated September 30, 1970 made by P. R. Salunke, Circle Police Inspector, Mahad Division (Ex. P. 1175) there are two tombstones on the southern side, three on the western side, four on the northern side and twelve on the eastern side.

The rival contentions

83.2 The contention of the Hindu parties is that this dilapidated structure was an ancient temple of Goddess Mahikavati which was desecrated by the Muslims, while the contention of the Muslim parties is that it was a dilapidated mosque known as the 'Jumma Masjid', and that in the open space surrounding it there is an old Muslim cemetery and that the said mosque was used until thirty or forty years ago for Id prayers but thereafter has been used only for the Janaza prayers, that is, the funeral or after-death prayers. In view of this controversy, it has been considered desirable to refer in this Report to the said

structure as 'the disputed structure' and to the whole of the said property, that is, the said structure with the open spaces adjoining it, as 'the disputed property', unless the context required some other mode of reference.

83.3 This dilapidated structure suddenly sprang into prominence on the communal stage when the Hindu claim was first made publicly by the Shiv Sena Chief, Bal Keshav Thackeray, at a public meeting held in Bombay at the Chowpatty stands on November 2, 1969. The relevant portion of the said speech of Bal Thackeray is as follows (Ex. G. 257) :—

"In the afternoon someone was telling me, 'Balasaheb, there is a historical temple at Mahad. A coconut is broken and offered to the Goddess there. It is a good old tradition but this year the Muslims have opposed it. It is said that they will not allow the breaking of a coconut.' I care a hang. I am going to visit Mahad personally and I will break a coconut there myself. Those who obstruct will suffer. I tell this to the Government, 'How long are we to tolerate this?'"

Whether the disputed structure was a temple ?

83.4 The record shows that there are several legends and historical accounts about the disputed structure. In the report dated November 29, 1969 signed by S. L. Chiney, S.P.(Int.), for D.I.G.(Int.) made to the Home Secretary (Ex. G. 212) it is stated :—

"The dilapidated Hindu temple of Mahikavati in Mahad has a legend connecting it with Ramayana and mythology has it that the temple then existed in full structure on the bank of Savitri river at the very same spot where it exists in ruins today. According to the historical legend, this temple was destroyed by Afzalkhan who was deputed by Aurangzeb to kill Shivaji. Since then this temple is claimed by the local Muslims as part of their property."

83.5 In the report dated January 12, 1970 also signed by S. L. Chiney for D.I.G. (Int.) addressed to the Home Secretary (Ex. G. 214) it is, however, stated :—

"Enquiries go to show that the Mahikavati temple, situated on the bank of Savitri river, has a legend behind it connecting with the Indian mythology. The historical legend says that it was destroyed by Zulfikar Khan, a General of the Moguls."

83.6 In the report dated January 13, 1970 from D.I.G. (Int.) to the I.G.P. (Ex. G. 217) it is stated :—

"In a civil suit filed regarding possession of the plot (S. No. 337) on which the Mahikawati temple is situated and on which also stands a dilapidated mosque which, as the legend goes, was converted out of a temple in the years past by Zulfikar Khan, a general of the Mogul Emperor Aurangzeb, the decision has gone in favour of the Muslims."

It may be mentioned that no civil suit was filed for possession of the disputed property, but what the D.I.G. (Int.) was referring to were the proceedings for correction of the Record of Rights adopted by the

Mahad Municipality in the year 1960 for entering its name in the Record of Rights as the owner in place of the Muslim Jamaat, which proceedings will be referred to later.

83.7 In an article entitled 'the Mahikavati Temple at Mahad' written by Nivas Pore, published in Sunday the 28th December 1969 issue of the Marathi daily the *Navakal* (Ex. P. 1067) the history of the disputed structure is thus set out :—

“From the remains of this temple which are there even today and from the condition in which the old people have seen the temple since their childhood it is proved hundred per cent that this construction is of the Hemadpanti Hindu style. From the name Mahikavati of this temple, Mahad town was formerly known as Mahikavati Nagar. Today this temple stands in a very dilapidated condition. This dilapidation of this temple must have taken place for the first time on a large scale in the year 1682. Dadaji Raghunath Deshpande (Mahadkar), the Karbhari of Mahad, was sent by the Chhatrapati Sambhaji Raje to attack the Siddi of Janjira and to suppress his revolt. However, in that battle Dadaji Raghunath was utterly defeated. The Siddi chased Dadaji Raghunath upto Mahad. He surrounded the famous fort at Mahad. The guns were fired from the creek at the fort. The historians believe that it was in that attack that the Mahikavati temple inside the fort suffered a heavy damage for the first time. It also stated that at that very time this temple was desecrated and the image of the deity in the temple was thrown into the creek. This belief corroborates the current legend to the effect that the deity jumped into the creek.”

83.8 Substantially the same historical account is given in an article entitled “Mahikavati of Mahad : A Search into the Real State of Affairs” by S. B. Savant (C.W. 29) which was published in the 24th January 1970 issue of the Marathi daily the *Navshakti* (Ex. P. 1075). In the said article Savant has stated :—

“There is no definite evidence in history showing as to when this temple of Mahikavati of Mahad was desecrated. But this temple might have been desecrated at the time when, after the death of Shivaji, the Siddi of Janjira attacked Mahad, defeated Dadaji Deshpande, the Karbhari of Mahad and also carried away his wife.” The Siddi of Janjira who attacked Mahad was Siddi Kasim as mentioned at pages 92 and 93 of the 1964 edition of the Maharashtra State Gazetteer of Kolaba District. The same account is repeated by Savant in his affidavit. The relevant passage from his affidavit is as follows [C.W. 29/1(6)/3252(4-5)] :—

“No reliable historical record is available regarding the temple of Mahikavati, but it is generally believed that this was the site of an old temple of Mahikavati which was subjected to cannon-firing by the Siddi of Janjira in 1682 and was desecrated thereafter by throwing the idol into the river. The stone engravings and the Hemadpanti architecture of the main entrance to the dilapidated structure fortify the belief that it was the site of a Hindu temple. . . . Be

it as it may, the fact remains that it was a deserted and desecrated temple for centuries. Some time in the concluding period of the 19th Century the Muslims used it as a burial-ground. There are graves all round the dilapidated walls and they are so near each other that it is difficult to go up without trampling upon some of them."

83.9 What purports to be a detailed history of the disputed structure was published in an article entitled "History of Mahad-Mahikavati (Mahishmati) Temple" in the 25th January 1970 issue of the Shiv Sena weekly the *Marmik* (Ex. G. 268). According to this article, the temple of Goddess Mahishmati, the presiding deity of the Kamboj Kings, was on the bank of the harbour. At the end of the Yadav rule Muslim kings known as Nayate conquered the territory, but did not damage or destroy any Hindu temple. Thereafter Malik Altuja, one of the Bahamani rulers, conquered the territory and established his rule and converted a large number of people, but did not touch any place of worship. Malik Altuja was defeated by king Shankarra of Vishalpur. Thereafter Malik, a general of Burhan Nizamshah the Second, conquered the region and began destroying all temples and the temple of Mahishmati was ravaged. Later, Adilshah the First of Bijapur restored several ravaged towns including Mahad. He handed over the whole tract to More of Javali. The More family were worshippers of Goddess Mohishmati and they renovated the damaged parts of the temple and installed an idol of Goddess Mahishmati in the temple. Out of fear of Muslim raids the public, however, stopped going to the temple and the idol was removed and buried in a safe place. A little before Shivaji's time the idol was found by someone and installed ceremoniously in the Jak Mata temple. The article concluded its historical survey by stating. "The Mahishmati temple must have been destroyed by the Muslims some time between 1400 A.D. and 1500 A.D. Ever since Shivaji's time right till the end of the Peshwa rule, it is in a dilapidated state, being defiled and hence derelict."

83.10 The said article in the 'Marmik' further stated :—

"A peculiarity of this Mahishmati temple is that the Muslims have not built any turbat (i.e. any grave) in the compound of the temple or in the temple itself (inner precincts). The reason is that the converted Muslims of those days were afraid and are still afraid to go into this temple."

This assertion is contrary to the admitted fact before the Commission, namely, that the graves on the mound in the open spaces of the disputed property are all Muslim graves.

83.11 In the proceedings under section 145 Cr.P.C. with respect to the disputed structure (Miscellaneous Case No. 40 of 1970), which will be referred to in detail later, it was contended by the Hindus represented by Dr. Dattatraya Pitamber Mehta, popularly known as Dr. Baburao Mehta (C.W. 46), and Dagdu Balu Parte (the deponent of affidavit No. 392) that the temple of Mahikavati was constructed during the regime of Hemadpant, the Chief Minister of King Yadav of Deogiri (Ex. P. 1120).

83.12 Thus, there appears to be no historical record showing with any certainty when or by whom the temple of Mahikavati was constructed nor when or by whom it was desecrated. According to one intelligence report, namely, Exhibit G. 212, it was desecrated by Afzalkhan, while according to the other intelligence reports, namely, Exhibits G 214 and G 217, the Mogul general who destroyed the temple was Zulfikar Khan. According to the article in the *Marmik*, it was destroyed by Malik, the general of Burhan Nizampur the Second, some time between 1400 A.D. and 1500 A.D., before the days of Shivaji, while according to S. B. Nivas Pore and S. B. Savant it was destroyed in 1682 A.D. by the Siddi of Janjira during the reign of Sambhaji.

83.13 Ancient Hindu temples were usually built on river banks or on an elevation. The said mound as also the river bank would have, therefore, afforded an ideal spot for constructing a temple and the question that arises is whether the disputed structure was once a temple of Goddess Mahikavati.

83.14 No spot other than the site of the disputed structure has been indicated or suggested by anyone as the site of the temple of Goddess Mahikavati. On the other hand, there are two pieces of documentary evidence, both in existence long before any controversy with respect to the disputed structure arose, which clearly indicate that the temple of Mahikavati was located in the disputed structure or on its site. They are the Gazetteer of the Bombay Presidency and the Record of Rights for the year 1914.

83.15 In the Gazetteer of the Bombay Presidency, Volume 11, relating to Kolaba and Janjira, 1883 Edition, foot-note 1 at page 344, which is reproduced as foot-note 2 at page 851 of the 1964 edition of the Maharashtra State Gazetteer of Kolaba District, is as follows :—

“At the junction of the Savitri and the Gandhari is a mosque still known as Maika or Mahika Mosque which occupies the site of, and is probably built of the stones of, a Hemadpanti temple. The mosque seems to have been turned into a battery and to have undergone a cannonade from downstream.”

83.16 In the Record of Rights for the year 1914 (Ex. P. 1172) the following note appears in the Remarks Column, namely, “There is an ancient temple of Mahikavati in Hissa No. 1 and that portion is used by the Muslims as graveyard etc.”

83.17 In support of the case that the disputed structure was a temple, it was contended before the Sub-Divisional Magistrate, Mahad Division, in the said proceedings under section 145, Cr.P.C. that a small idol of Ganpati is carved on the stone of the front framework (Ex. P. 1120). This claim was repeated before the Commission by Dr. Baburao Mehta. He has deposed (C.W. 46/7/3958) :—

“This is a ruined temple. There is no idol in this temple. All that remains is a carving of Ganpati on one of the stones and the Hemadpanti construction.”

In cross-examination he has changed that assertion and has stated (C.W. 46/16/3963) :

“The carving on the stone mentioned in paragraph 7 of my deposition is, according to me, very similar to the idol of Ganpati.”
Dr. Baburao Mehta has also sought to make out that the disputed structure is still held in great reverence by the Hindus. He has deposed (C.W. 46/16/3963) :—

“Since my childhood once a year on Coconut Day I go there at about 4 p.m. when I go to the river to throw coconuts in the water. I used to climb up the mound, do obeisance to the carved figure, climb down the mound and then walk down to the river bank to throw coconuts in the water. Lots of Hindus used to do the same on the Coconut Day.”

Dr. Baburao Mehta has filed two affidavits before the Commission. The first, which was affirmed on August 21, 1970, was filed on August 25, 1970. On November 22, 1972 when he appeared before the Commission in pursuance of the notice dated November 2, 1972 issued to him by the Commission, he applied for and was granted time to file a supplemental affidavit. His supplemental affidavit was affirmed and filed on November 24, 1972. In neither of these affidavits have these facts been set out. The only explanation which he could give for this omission was that he did not remember these facts at that time as it was not possible to remember everything. Dr. Baburao Mehta has proved an unreliable witness who on several points has not spoken the truth and it is not possible to place any reliance upon his evidence unless corroborated by other reliable evidence. The only other piece of evidence which refers to this offering of coconuts is the said speech made by Bal Thackeray on November 2, 1969 (Ex. G. 257) in the course of which he said that coconuts were broken and offered to the Goddess at the disputed structure and that that was an old tradition, but that year the Muslims had opposed the breaking of coconuts. It may be noticed that the claim made by Bal Thackeray is very different from that made by Dr. Baburao Mehta. Dr. Baburao Mehta does not speak of the breaking of coconuts and offering them to the Goddess at the disputed structure. He only speaks of doing obeisance to the carved figure. There is no evidence at all before the Commission of any Hindu going up to the disputed structure in order to break a coconut and offer it to the Goddess, and the only evidence about going up the mound on Coconut Day to do obeisance to the carved figure is the uncorroborated oral testimony of Dr. Baburao Mehta which, as mentioned earlier, cannot by itself be relied upon without there being reliable corroborative evidence in support of it.

83.18 The Commission visited Mahad four times for local inspection and had closely examined the disputed structure. The carvings on the stone frame-work of the entrance, which were very few, were such as are to be found on the walls of Hindu temples, but not one of them was of Lord Ganpati. All Hindu Counsel and officers who were with the Commission were agreed upon this point. None of the carvings even remotely resembled the image of Lord Ganpati. I accordingly reject the evidence of Dr. Baburao Mehta on this point. He was an extremely

partisan witness and, as will be pointed out later, he has played a leading role in the agitation in connection with the disputed property. He was one of the two persons who represented the Hindus in the said proceedings under section 145, Cr.P.C. and these allegations were made by him in an attempt to lend support to the Hindu claim that this was the site of the old temple of Mahikavati.

83.19 The allegation that people go up the mound to break coconuts on Coconut Day was also made in the affidavit of Vasant Vinayak Bhagwat (Affidavit No. 382), the Secretary of the Kolaba District Branch of the Jan Sangh. Vasant Bhagwat, however, did not choose to step into the witness-box and to subject himself to cross-examination. It is, therefore, not possible to accept the bare statement of Vasant Bhagwat untested by cross-examination. S. P., Khan has described the practice observed in Mahad on Coconut Day as follows (C.W. 97/33/3241) :—

“The practice in Mahad at the time of Narali Purnima is that one procession is not taken out but people go in groups of three or four at different points on the river bank and break coconuts and throw them in the river. Some also go to Bunder Naka for this purpose, but nobody goes up the mound on which the disputed structure is situate to break a coconut as impliedly alleged in the affidavit of Vasant Vinayak Bhagwat (Affidavit No. 382).”

83.20 The P.S.P. leader, Surendranath Govind Tipnis, popularly known as Surba Tipnis, has deposed that no one used to go to the disputed structure for offering prayers or otherwise on Coconut Day and that the Hindus of Mahad who used to go to the river bank to throw coconuts in the water on Coconut Day used to go not to the disputed structure but to the jetty at the confluence of the Savitri and the Gandhari (C.W. 47/10/3969).

83.21 In view of this categorical evidence given by the S.P. and Surba Tipnis, I hold that the Hindus had not been going to the disputed structure either to do obeisance to the carved figure or to break a coconut and offer it to the Goddess and these allegations have been made only with a view to bolster up the Hindu claim that the Hindus had been making use of the disputed property and that it was not in the exclusive possession of the Muslims. None the less the carvings on the stone pillars at the entrance and the Hemadpanti style of architecture clearly indicate that the disputed structure was once upon a time a temple or was built out of the stones of a temple.

Whether the non-Muslim parties are barred from contending that the disputed structure was not a mosque?—

83.22 Before we turn to the question whether the disputed structure was a mosque, it is necessary to deal with the contention raised by the Muslim parties that all parties are barred from contending that the disputed structure was not a mosque or that the Muslim Jamaat was not the owner of the disputed property. The facts upon which this contention is based are that by an application dated November 18, 1959 (Ex. MM 4), Abdul Kadir Kablay (M.M.W. 3), describing himself as

the co-trustee along with Shahabuddin Miya Pansare, Sherif Shaikh Ibrahim Tare and Mahomed Sharif Abdul Rahiman Havaladar, of the Jumma Mashid Mahad Bunder (Padki Mashid) Public Trust, applied for registration of the said trust under the Bombay Public Trusts Act, 1950. The said trust was thereupon registered on June 30, 1960 (Ex. MM 6). The certified copy of the extract from the Register of Public Trusts (Ex. MM 5) shows that the immovable properties of the said trust are mentioned in the Register as agricultural lands at village Gandhartal bearing survey No. 2A Hissa No. 4 and "Masjid and Kabrasthan" at Mahad bearing Survey No. 196A Hissa No. 1 and C.T.S. No. 337. No appeal was filed by anyone against the order registering the said trust.

83.23 There are several questions which have been raised before the Commission with respect to this application. They will be considered in the next chapter. The only question which requires to be considered at this stage is the contention that as the "Masjid and Kabrasthan at Mahad" bearing Survey No. 196A Hissa No. 1 and C.T.S. No. 337 were shown in the Register of Public Trusts, by reason of the provisions of the Bombay Public Trusts Act, 1950, and particularly sections 21(2), 79 and 80 thereof, it was not open to any party to contend that the disputed structure was not a mosque or that the Muslim Jamaat, Mahad, was not the owner thereof. Mr. Salik, on behalf of the fifteen Muslims from Mahad, submitted that under section 21(2) entries made in the Register of Public Trusts are final and conclusive; under section 79 the question whether a particular property is the property of a public trust is to be decided only by the authorities under the said Act; and, unless set aside by the City Civil Court in a matter arising in Greater Bombay and in other cases by the District Court or in appeal by the High Court, such decision is to be final and conclusive, and under section 80 a Civil Court has no jurisdiction to decide this question and, therefore, the question whether the said mosque was the property of the Jumma Mashid Mahad Bunder (Padki Mashid) Public Trust having been decided in the matter of the said application for registration of the said trust, it could not be reagitated before any Court or authority or even before this Commission of Inquiry.

83.24 Section 19 of the Bombay Public Trusts Act provides for an inquiry to be made whether a trust exists and whether such trust is a public trust and whether any property is the property of such trust. Under section 20, on completing the inquiry, the Deputy or Assistant Charity Commissioner is to record his findings on the matters inquired into and under section 21(1) he is to make entries in the Register of Public Trusts in accordance with the findings recorded by him or in accordance with the final decision of the competent appellate or revisional authority, if any appeal or revision had been filed against his findings. Section 21(2) provides as follows:—

"The entries so made shall, subject to the provisions of this Act and subject to any change recorded under the following provisions, be final and conclusive."

Section 22 provides for the recording of a change occurring in any of the entries recorded in the Register of Public Trusts and the procedure to be followed with respect thereto. Sections 79 and 80 provide as follows :—

“ 79 *Decision of property as public trust property* :—

“ (1) Any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided by this Act.

“ (2) The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, shall, unless set aside by the decision of the Court on application or of the High Court in appeal be final and conclusive.

“ 80 *Bar of jurisdiction*.—Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, and in respect of which the decision or order of such officer or authority has been made final and conclusive.”

83.25 The scope and ambit of sections 79 and 80 were considered by a Full Bench of the Bombay High Court in *Keki Pestonji Jamadar v. Radabai Khodad Merwan Irani*, (1972) 74 Bom. L.R. 198 F.B. and it was held that questions of title to the trust property were outside the scope of the inquiry under section 19 and, therefore, the question whether the author of the trust was the owner of the property of which he has created a trust or had otherwise authority to create the trust were not covered by sections 79 and 80 and a Civil Court would have jurisdiction to decide such a question and section 80 cannot operate as a bar to that jurisdiction. A Civil Court would, therefore, have jurisdiction to decide the questions whether the Muslim Jamaat, Mahad, was the owner of the disputed structure or whether any trust was created in respect thereof or whether anyone had authority to create a trust in respect thereof. Further, section 80 creates a bar to the jurisdiction of Civil Courts only. It does not operate as a bar to the jurisdiction of a Commission of Inquiry to inquire into and report on the questions which were the subject matter of inquiry under section 19 before the Deputy or Assistant Charity Commissioner. It is, therefore, open to the parties to contend before me that the disputed structure was not a mosque and that the Muslim Jamaat, Mahad, was not the owner thereof or that no valid trust was created in respect of the disputed property.

Whether the disputed structure was a mosque ?

83.26 The Muslim witnesses who have given evidence with respect to the Muslim claim that the disputed structure was a mosque are Dr. Mrs. Oamar Shujauddin Kazi [M.M.W. 1/1(3)/3317(1)], Abdulla Shahabuddin Mapkar (M.M.W. 2/4-5/3383), Abdul Kadir Shaikh Hasan Kablay (M.M.W. 3/16/3393), Ibrahim Tayyabkhan Chichkar

(C.W. 30/13/3274) and Sujauddin Kamaluddin Kazi (C.W. 31/5/3277).

83.27 Dr. Mrs. Kazi and Abdulla Mapkar have deposed that there is a mosque known as the Jumma Masjid situate on the disputed property. The local inspection taken by the Commission, however, showed that the disputed structure was not being used and could not have been used for the last several years as a mosque. Mapkar, though he admitted that there was no 'Mehrab' in the disputed structure, alleged that the place in the western wall where the 'Mehrab' previously was could be seen. He admitted that there was no sign of a 'hauz' on the disputed property. He, however, claimed that on the southern side there were some stones lying around which were the ruins of a 'hauz'. He also admitted that there was no structure resembling an Idga at the disputed site. The stones on the southern side which were claimed to be the ruins of a 'hauz' could as well be the ruins of a tank which is usually to be found in all Hindu temples. It is not possible to say with any certainty whether these stones are the ruins of a 'hauz' or of a temple tank. It requires strong imagination and considerable religious fervour to picture the 'Mehrab' at the place in the western wall where, according to Mapkar, the Mehraḥ previously was situated. Every witness, Hindu as well as Muslim, is agreed on the point that today the disputed structure is in the same condition as it was during his childhood. According to Mapkar, who is 47 years old and a permanent resident of Mahad, a new mosque was constructed in the 'mohalla' where the disputed structure is situated when the Muslim population increased. He has, however, admitted that this new mosque was built prior to his birth and that the old "mosque" has not at any time been repaired. Dr. Mrs. Kazi came to reside in Mahad after her marriage to Shujauddin Kazi in 1961. In her affidavit she has stated :—

"Since the time I have come to reside in Mahad the mosque is in dilapidated condition and the same is used only for Janaza prayers, i.e. after death prayers. I say that the said mosque is therefore shown as Padki Mosque in the Record of Rights."

83.28 Her husband, Shujauddin Kazi, has been residing in Mahad since 1943. He resides just opposite the disputed property. He has deposed that ever since he came to reside in Mahad, the disputed structure was in the same dilapidated condition as it is now. Ever since he was a child Ebrahim Chichkar, who is 45 years old, had seen this structure in the same roofless and ruined condition with walls half fallen down as it is today. Abdul Kadir Kablay, who is 56 years old, has deposed to the same effect. The two Hindu witnesses, Dr. Baburao Mehta (C.W. 46/7/3958), who is 70 years old, and Surba Tipnis (C.W. 47/8/3968), the oldest amongst the witnesses from Mahad and who was 74 years old when he gave evidence, have stated that ever since their childhood they had seen the disputed structure in the same condition as it is today.

83.29 In an article (Ex. MM 1) written by Dr. Mrs. Kazi (M.M.W. 1) published in the 18th February 1970 issue of the Urdu

daily of Bombay, the *Aaz*, and in the 22nd February 1970 issue of the Urdu fortnightly the *Rehruma-e-Millad*, she has stated that the full name of Mahad was 'Mahikavati' and for the said reason, the mosque was known by this name and the authority she refers to in support of this statement is Crawford. It is also stated in the said article that this mosque is now called the "Jumma Masjid" and is surrounded by an old graveyard and is situate at the junction of the Savitri and the Gandhari and that the said property has been in the possession of the Muslim Jamaat for the last 300 years or, in any case, since 1906, and that for the maintenance of the said mosque some agricultural land and a right of ferry have been granted. It may be stated that the year 1906 is mentioned in the said article because it was in that year that a Muslim graveyard was shown on the disputed property in the revenue records (Ex. P 1171). Very much the same facts have been stated by Dr. Mrs. Kazi in another article (Ex. No. 75) written by her and published in the 24th April 1970 issue of the Marathi weekly the *Maharashtra Muslim*.

83.30 In support of their claim that the disputed structure was a mosque, the Muslim parties have relied upon a document of the year 1738 which they described as a Sanad (Ex. MM 7). The original of the said document was produced by Abdul Kadir Kablay (M.M.W. 3), who had been handed over this document by one Sharif Tare for the purpose of producing it before the Commission as Sharif Tare was confined to his bed as a result of a paralytic stroke suffered by him. The said document was really an award made by consent by the Subha of Mahal at Fort Mahad granting to Ali son of Sonaji Pantava and Bavji the 'Pantawahood' and 'Tari' (ferry rights) of the Jumma Mosque in return for the payment of revenue of Rs. 3 for the ferry rights, rights which according to the said award, had been enjoyed by the family of Ali and Bavji. Sharif Tare is a descendant of the said Ali and is also one of the trustees of the said Jumma Mashid Mahad Bunder (Padki Mashid) Public Trust. The said document was old and tattered and bore all the hallmarks of authenticity and, coming from one of the descendants of the said Ali, must be held to have been produced from proper custody and even if this were a matter in a Court of law, it must be said to have been properly proved by reason of the provisions of section 90 of the Indian Evidence Act, 1872. The said document, however, does not carry the Muslim case much further. It refers to the Jumma Mosque, but it does not indicate the place where such mosque was situate. Mr. Salik submitted that since ferry rights had been conferred by the said document upon the two persons mentioned therein for the upkeep and maintenance of the Jumma Mosque, it would logically follow that the said mosque was situate near the jetty and that it could only be the disputed structure. Mr. Salik is right in the first part of his submission, but the second part does not necessarily follow. The mosque could have been situate anywhere else in the vicinity.

83.31 In order to show that such a mosque did exist, the Muslims have also relied upon the permanent grant of agricultural lands bearing

Survey No. 2, Plot No. 4 of village Gandhar in the year 1865 by the Government of Bombay to the Jumma Mosque. The certified copy of the extract from the Register of Alienated Villages and Lands in Mahad Taluka for the year 1886-1887, kept under section 53 of the Bombay Land Revenue Code, 1879 (Ex. MM 8), produced by Kablay shows that the said grant was made on April 20, 1865 to the "Jumma Masjid Manager Hasankhan Allikhan Deshmukh" and a Sanad in Form 28 was issued to him. Neither the said Sanad nor a copy thereof have, however, been produced. From the said extract it appears that the area of the said plot of land was 9 gunthas, the assessment was rupee, the amount of old Judi or Salami was 2 annas 6 pies, the additional quit rent was 2 annas, and the alienated land revenue was 11 annas 6 pies. The class of alienation is mentioned in the said extract as "Class III—Devasthan." Just as the said Award of the year 1738 does not show where the Jumma Mosque was situate but shows that there did exist in Mahad prior to 1738 a mosque known as the Jumma Mosque in respect of which the Pantawahood and the ferry rights were granted, similarly the entries with respect to the agricultural land in village Gandhar do not show the location of the said mosque but do prove that such a mosque existed in the year 1865 and in respect of which this permanent grant of lands in the Gandhar village was made. The location of the said mosque is, however, pin-pointed by the first foot-note at page 344 of the 1883 edition of the Gazetteer (quoted above) as being at the junction of the Savitri and the Gandhari occupying the site of a Hemadpanti temple, and the fact that this site was known as Maika or Mahika is also shown by the same foot-note. It is thus clear that the disputed structure was at first a temple and prior to 1738 had been turned into a mosque. It is important to note that no one has been able to indicate or suggest any other site where such temple or mosque existed.

83.32 A visit to the disputed structure would show that it was constructed at a place ideally located for the purpose of the defence of Mahad town. Its thick walls and the height at which it is placed commanding the jetty and the approach to the town, both from the road and the river, make it an ideal military outpost for meeting any invasion, the top of the mound affording a view of the Savitri and the Gandhari and the road approaches to Mahad for a considerable distance. The foot-note at page 344 of the 1883 Gazetteer also shows that the disputed structure was at one time converted into a battery and underwent a cannonade from down stream. The military advantages afforded by the situation of the disputed structure appear thus to have been availed of and probably the ruined walls are the result of the said cannonade and subsequent neglect due to disuse. Though the said foot-note refers to the mosque in the present tense as if it were still standing at that time, the concluding sentence of the foot-note, namely, "The mosque seems to have been turned into a battery and to have undergone a cannonade from down stream" would show that at the time of the preparation of this Gazetteer, there was no mosque in existence but only a ruined

structure, which bore the marks of devastation caused by a cannonade.

83.33 There is thus no evidence when a temple was constructed on the disputed property or by whom it was constructed or when and by whom it was destroyed or desecrated. There is equally no evidence when a mosque, if any, came into existence at this place or when and for what reason it was abandoned. That there was a temple at this site seems consistent with historical experience. There is also a strong tradition that there was a temple at this site as appears from the foot-note at page 344 of the 1883 Gazetteer penned much before any controversy on this point arose. The said foot-note also shows the existence of a mosque at this site. The case for the existence of a mosque known as the Jumma Mosque at this site gains support from the Award of 1738 which shows that ferry rights were attached to the said Jumma Mosque.

Whether Id and Janaza prayers were offered at the disputed structure ?

83.34 Five witnesses have deposed on the question whether prayers were offered at the disputed structure. These witnesses are Abdul Kadir Kablay [M.M.W. 3/1(3)/3385(1), 4/3387, 7/3388, 10-1/3389-90, 22/3396], Dr. Mrs. Qamar Kazi (M.M.W. 1/31/3330), Abdulla Shahabuddin Mapkar (M.M.W. 2/4/3382-3), Ebrahim Tayyabkhan Chichkar [C.W. 30/1(4)/3270(2), 13/3274] and Shujauddin Kamaluddin Kazi [C.W. 31/1(1)/3276(1), 5/3277].

83.35 Abdul Kadir Kablay (M.M.W. 3) owned a house opposite the disputed structure in which he was conducting an Arabic school. In his affidavit he has alleged that general prayers were said by the Muslims of Mahad at the disputed structure till about 1940 and that thereafter only Janaza prayers were being said there and that he personally had offered prayers in the said mosque in 1940 and was offering Janaza prayers there till the date of his affidavit, i.e., August 19, 1970. In cross-examination he, however, admitted that the only prayers he had ever said in his life at the said structure were the Id and Janaza prayers during the period 1930 to 1940 and Janaza prayers thereafter. He has mentioned the names of the persons for whom he had offered the Janaza prayers, namely, in 1960 for his mother, in 1966 for one Rabiyyabi Kable, in 1966 for one Rabiyyabi Deshmukh and his cousin Mohamedsaheb Kable, in 1966 or 1967 for his daughter and in 1968 or 1969 for one Shaikh Abdulla Pansare. According to him, about 150 to 200 persons used to congregate at the disputed structure for the Id prayers and as this place was found too small, from 1940 onwards Id prayers were being conducted in two other mosques, namely, the Sultan Jamai Masjid situate near Habas Tank and the Khuddusia Mosque. He has deposed that Janaza prayers are offered in a standing position in any place which is clean, even in a street or a lane, before a corpse and last about two to three minutes and that at the time of the Janaza prayers, the funeral bier is taken inside the mosque. He has admitted that there is no Peshimam or Bangi at the disputed structure as daily prayers are not offered there.

83.36 Dr. Mrs. Qamar Kazi, who resided opposite the disputed property, has deposed that she had herself seen Janaza prayers being offered in the disputed structure. She has mentioned four such instances, namely, the funerals of the mother-in-law of one Babu Mopla belonging to the Kablay family, who died at the end of 1961, of one Mrs. Deshmukh who died in 1962, of one Dadu Nana who died in about 1965 and a man from the Kable family who died in or about 1966. She has further said that the Janaza prayers might have been offered at the disputed structure after 1966, but she personally had not seen them. She has, however, admitted that usually Janaza prayers are offered outside the Navre Pir Dargah as at that place there is more shade and greater space and the ground is smooth. Abdulla Shahabuddin Mapkar (M.M.W. 2) has deposed that the only prayers which he had offered at the disputed structure were the Janaza prayers and sometimes the Id prayers and that the last time he had offered prayers at this place was in the year 1965 or 1966. He has further deposed that they had arranged for a man to provide water for ablutions at the time of such prayers. He was unable to give any reason why the disputed structure was not repaired even though prayers were offered there.

83.37 Ebrahim Tayyabkhan Chichkar (C.W. 30) and Shujauddin Kamaluddin Kazi (C.W. 31) have both stated in their affidavits that neither the Hindus nor the Muslims had within living memory used the disputed structure for prayers. Chichkar has further stated that he had attended a number of Muslim funerals in Mahad but none of them had stopped or gone upto the dilapidated structure nor were any Janaza prayers ever said there. Shujauddin Kamaluddin Kazi, the husband of Dr. Mrs. Kazi, has also reiterated the same fact in his cross-examination. Though in his affidavit Chichkar has denied that any Janaza prayers were said at the disputed structure, it appears from the report dated September 30, 1970 (Ex. P 1175) made by C.P.I., P. R. Saluke, Mahad (P.W. 105) requesting for sanction to prosecute Bal Thackeray and six other persons for their act in entering upon the disputed property and hoisting a flag there, that in his police statement, Chichkar along with Babu Mopla, Sharif Tare, Abdul Kadir Kablay (M.M.W. 3) and Dr. Mrs. Kazi (M.M.W. 1) had stated that a mosque known as the Jumma Mosque was situate at the disputed property and that whenever there was any death amongst the Muslims, the dead body was brought near the said place and put down there and the Muslims stood there and offered Janaza prayers.

83.38 The above evidence shows that admittedly no Id prayers were said at the disputed structure since 1940 and the evidence on the point whether any such prayers were said there prior to 1940 is very meagre and unconvincing. It is difficult to understand why Id prayers, which are largely attended (the strength according to Abdul Kadir Kablay being 150 to 200) should have been held on a sloping mound where the ground is uneven, when there are other vacant and more convenient places available. It is also not possible for 150 to 200 persons

to gather in the disputed structure or in the open spaces adjoining it. Id prayers are held once a year and are congregational in their nature and are not indicative of either the ownership or the possession or of the nature of the structure where these prayers are held. Similarly, the offering of the Janaza prayers would not show that the disputed structure was once a mosque. Since there are a number of Muslim graves in the open space outside the disputed structure, it is conceivable that when this open space was used as a burial-ground, Janaza prayers were said there, but it does not seem probable that after its use as a burial-ground was discontinued, the funeral bier would be taken up the mound, which is uncared for and is not kept clean, for the purpose of the Janaza prayers, even though the mound lies on the route of the funerals to the new Muslim burial-ground in Gandharpala Village.

83.39 The evidence on all these points must be treated with great caution. There are two groups amongst the Muslims of Mahad—one being S. B. Savant's group to which Ebrahim Chichkar (C.W. 30) and Shujauddin Kazi (C.W. 31) belong, and the other consisting of those who are opposed to Savant's policy (M.M.W. 1/16/3325). Savant is anxious to establish that there is no Islamic religious history or sentiment attached to the disputed structure or the disputed property. As they belong to his group, Chichkar and Shujauddin Kazi support him. In fact Chichkar admits taking from Savant a copy of his affidavit, reading it and then drafting his own affidavit (C.W. 30/6/3272). The other group of which the leading personalities are Dr. Mrs. Kazi, Abdulla Mapkar and Abdul Kadir Kablay want to establish the Muslim ownership and possession of the disputed property and to prove the Muslim claim that it is a ruined mosque.

Whether there was a Muslim burial-ground at the disputed property ?

83.40 One fact, however, emerges undisputed from the evidence, namely, that the open space outside the disputed structure was once used by the Muslims as a burial-ground. Surba Tipnis (C.W. 48/8/3968), Savant [C.W. 29/1(6)/3252(4)], Ebrahim Chichkar [C.W. 30/1(4)/3270(1)], Shujauddin Kazi [C.W. 31/1(1)/3276(1)], Dr. Mrs. Kazi [M.M.W. 1/1(3)/3317(1)], Abdul Kadir Kablay [M.M.W. 3/1(2)/3385(1)], S. P. Khan [P.W. 97/1(4)/3112(2)] have all deposed to this fact and their evidence on this point has not been challenged. The fact that there is an old Muslim graveyard at the disputed site is also shown by the entries in the Record of Rights (Exs. P 1171 and P. 1172) and the report dated September 30, 1970 (Ex. P 1175) made by C.P.I., Saluke which lists the number of tomb-stones on each side of the structure. This fact is also admitted in the application dated January 19, 1960 made by the Secretary of the Mahad Municipality for correcting the Record of Rights by showing the Mahad Municipality as the owner of the said property and is accepted by the Sub-Divisional Magistrate, Mahad Division, in his judgment dated June 23, 1972 in the said proceedings under section 145 of the Criminal Procedure Code (Ex. P 1120).

83.41 There is, however, no evidence at what point of time the disputed property was first used as a burial ground.

83.42 The burial ground has not been in use for the last several years, though there is no unanimity amongst the witnesses as to the time from which it ceased to be so used. According to S. B. Savant [C.W. 29/1(11)/3252(8)], its use as a graveyard was discontinued 40 to 50 years ago as there was no place left for new burials. He has further deposed that in the last 30 to 35 years, he had not seen any Muslim being buried there, but this statement of his is irrelevant since he has admitted that he has never attended any Muslim funeral in Mahad (C.W. 29/1(11)/3252(8), 31/3266). In his article "Mahikavati of Mahad : A Search into the Real State of Affairs" published in the 24th January 1970 issue of the "Navshakti" (Ex. P 1075) Savant has stated that the graveyard has been in existence for the last 70 or 75 years and that 40 to 50 graves could be seen even today. According to Mapkar, the disputed property has not been used as a burial ground for the last 100 years, as about 100 years ago the Muslims of Mahad started using for a burial ground land at village Gandharpala, outside the municipal limits of the Mahad Municipal Council (M.M.W. 3/16/3392). Savant has alleged that the burial ground in Gandharpala Village was given to the Muslims by the Mahad Municipality to be used for this purpose. Mapkar has, however, denied this. Savant's assertion does not seem to be correct because it is difficult to understand how the Mahad Municipality could give any land outside its municipal limits to be used as a burial ground or for any other purpose. It is Savant's case that the Mahad Municipality is the owner of the disputed property and that it had made the disputed property available to the Muslims for being used as a burial ground. His assertion that the land of the burial ground at Gandharpala was given to the Muslims by the Mahad Municipality appears to be an attempt by him to support that case by making out that the Mahad Municipality made available to the Muslims, in place of the burial ground at the disputed property originally made available by it, a plot of land situate in village Gandharpala, and thus prove that the Mahad Municipality was the owner of the disputed property.

Ownership of the disputed property

83.43 The contention of the Muslim parties is that the Muslim Jamaat, Mahad, is the owner of the disputed property, while the contention of S. B. Savant is that the Mahad Municipal Council is the owner of the disputed property.

83.44 The Muslim parties were unable to point out how and when the Muslims acquired ownership of the disputed property. In her article published in the 17th February 1970 issue of the Urdu daily the 'Aaz' and in the 22nd February 1970 issue of the Urdu fortnightly the "Rehnuma-e-Millat", Dr. Mrs. Kazi has stated, "It is difficult to say how this became our property. Some say Shahu Maharaj had given this land to the Muslims. Others say that the Siddis of Janjira took posses-

sion of this land and gave the same to the Muslims". As evidence of their title to the disputed property, the Muslims have relied upon the Award of the year 1738 as also upon the Record of Rights which shows the Muslim Jamaat as the holder of the disputed property and on their exclusive possession thereof for a number of years. Savant, on the other hand, has relied upon the entry made in the year 1902 in Village Form No. 1 showing the Mahad Municipality as the Khatedar and on the provisions of the Bombay District Municipal Act, 1901. He has contended that the name of the Muslim Jamaat was subsequently entered in the Record of Rights wrongly and without following the proper procedure and is, therefore, not binding.

83.45 The said Award of 1738 (Ex. M.M. 7) has already been referred to in paragraph 83.30 above. As mentioned therein, the said Award does not confer any right to the land upon which the disputed structure is situate but only grants the right of Pantavahood and ferry rights attached to the Jumma Mosque. The said Award, therefore, is not a document of title to the disputed property.

83.46 Neither the Muslim parties nor Savant have produced before me any document of title to the disputed property, but both sides have relied upon the revenue records.

83.47 The earliest relevant revenue document is of the original survey made in the year 1865-66 known as the "Bot-Khat" (Ex. P 1168). The disputed property is referred to therein as survey No. 129 measuring 1 acre and assessed to land revenue of 3 annas. From this Bot-Khat it appears that the land was then known as "Nadi-Kinari" (river bank).

83.48 The next document is the entry in the Taluka Form No. 5, the "Vasul Baki Patrak" (Recoveries and Balance Statement) as per the revenue survey settlement of the year 1898 (Ex. P 1169). The Vasul Baki Patrak gives the old survey number, namely, survey No. 129 and the new survey number, namely, survey No. 196, Falni No. 1. The land is described in it as "Nadi Kinari" (river bank) and is shown as Government land with the Mahad Municipality as its tenant.

83.49 The third document is an extract of the entry in the Village Form No. 1 from the Field Book for Kasbe Mahad for the year 1902-3 (P 1170). In this entry the area of the land is shown as 1 acre 20 gunthas. The land continues to be described as Government land and the Mahad Municipality is shown as the Khatedar and not as the tenant as in the Vasul Baki Patrak of 1898 (Ex. P 1169). The reason for this change is not known and cannot be found out from the said entry.

83.50 The fourth document is the entry for the year 1906 in Village form No. 1-C, namely, the Record of Rights, in respect of the plot of land bearing Survey No. 196, Falni No. 1 of Mahad Village admeasuring 1 acre 20 gunthas (Ex. P 1171). This is the first document prepared after the enactment of the Record of Rights Act, 1903 (IV of 1903). The said entry shows the Mahad Municipality as the holder or Khatedar. In respect of a sub-division of 8 gunthas of Kharaba land of this plot of land, in column No. 9 headed "Name of the present

Khatedar ” against the said sub-plot it is mentioned “ For graveyard etc. of the Muslims ” and the capacity in which the said sub-plot is held is shown in column No. 10 as ‘ Vahivatdar ’ and in column No. 11 the reason for transfer or alienation is given as “ From olden times ”. The name of the Government does not appear anywhere in this entry nor is there anything to show why the Government’s name is omitted.

83.51 The fifth document is of the year 1914. It is an entry in the Village Form No. 6, namely, the Record of Rights, in respect of the plot of land bearing Survey No. 196 situate within the municipal limits of Mahad (Ex. P 1172). In the said entry the Muslim Jamaat is shown as being in possession of the sub-plot bearing Plot Hissa No. 1, admeasuring 8 gunthas and the nature of right and the manner of its acquisition is shown under column No. 4 as “ Possessor from ancient times.” Under the remarks column the following note has been made :—

“ This No. 196 is with the Municipality as it stands in its name. The assessment is paid by the Municipality.

1. There is an ancient temple of Mahikavati in Hissa No. 1 and that portion is used by the Muslims as graveyard etc.”

83.52 The extracts from the Record of Rights for the years 1931-32 to 1969-70 (Exs. G 335 and P 1062) show the Muslim Jamaat as the Kabjedar. These extracts further show that in the Record of Rights in the column headed “ Crops and fallows ” there is a remark “ Dilapidated Mosque Graveyard ”. How a remark of this nature could have been made in the “ Crops and fallows ” column is certainly puzzling. The extract from the Property Register Card relating to C.T.S. No. 337 (Ex. P 1063) also shows the Muslim Jamaat as the holder.

83.53 The receipts for payment of revenue (Ex. MM 9 collectively) and the Khata in Village Form No. 8A (Ex. MM 11) produced by Abdul Kadir Kablay and the evidence of D. C. Joshi, the Tahsildar of Mahad (P.W. 102), show that the land revenue in respect of Survey No. 196A, Hissa No. 1, that is, the disputed property, was paid for the period 1942 to 1972 at least by the Muslim Jamaat (M.M.W. 3/5/3387, 21/3396).

83.54 When Savant was the President of the Mahad Municipality, on January 19, 1960 the Secretary of the Mahad Municipality filed an application to delete from the revenue and C.T.S. records the name of the Muslim Jamaat as the owner of the disputed property and in its place to enter the name of the Mahad Municipality. In the said proceedings the Mahad Municipality claimed that there was a temple named Mahikavati on the disputed property, which was in a ruined condition for a long time, and that there was no mosque in existence as contended by the Muslims, but the surrounding open land was being used by the Muslims as a graveyard and the name of the Muslim Jamaat had been wrongly entered as the owner in place of the Mahad Municipality. The Muslims, on the other hand, contended that there was a mosque known as the Jumma Mosque in a ruined condition on the disputed property and that the surrounding open land was used as a Muslim graveyard and that the disputed property was owned by and in the

possession of the Muslim community from the very beginning.

83.55 The relevant paragraphs of the order (Ex. P 1061) passed by the City Survey Officer and Mamlatdar, Mahad, on the said application on July 22, 1961 are as follows :—

“From the statement tendered by the Secretary Mahad Municipality and Panchas of the Muslim community and the extracts supplied by both the parties, it is revealed that none of the party proves, whether there was a Mahikavati temple or Jumma Masjid which is in the broken condition from so long. The property in question was in the name of the Government at the time of original survey, and the same is transferred in the name of Mahad Municipality at the time of revision survey. At the time of Pot Hissa measurement i.e. in the year 1906 the name of the Muslim community has been entered as an owner, as per possession and being used for Kabrasthan.

“It is, therefore, ordered that the name of the Mohamedan Jamaat against Survey No. 196 A/1 (C.T.S. No. 337) of Mahad already entered cannot be changed at this stage. The Municipal authorities may seek redress in the competent Court having jurisdiction.”

83.56 The Mahad Municipality did not go in appeal or revision against the said order nor filed any suit to establish its title to the disputed property.

83.57 Savant contended that the said entry in the Record of Rights for the year 1914 (Ex. P 1172) was illegal and unauthorized and made without following the procedure laid down in section 135D of the Bombay Land Revenue Code, 1879. He has relied upon the judgment of the Sub-Divisional Magistrate, Mahad, delivered on June 23, 1972 (Ex. P 1120) in Miscellaneous Case No. 40 of 1970 in the proceedings under section 145 Cr.P.C. commenced by the Police after Bal Thackeray hoisted the flag on the disputed structure. In the said judgment the Sub-Divisional Magistrate has held that the said entry was “wrong and probably a clandestine entry”. The relevant paragraphs of the said judgment are :—

“The Chief Officer of the Mahad Municipality has given a correct position when he has stated that this being a vacant land near the confluence of two rivers, both the Hindus and the Muslims go there for airing themselves. It is thus used by both the communities as citizens of Mahad and not as members of the Hindu or the Muslim communities. I, therefore, hold that neither the Hindu nor the Muslims, as such, were using it for religious purposes, but they both are using it in their capacity as citizens of Mahad which is a permissible use of Municipal property, and that it is the Municipality which is in legal and actual possession of the disputed property.

“I, therefore, order that the possession of this property shall be given to the Municipality of Mahad. The Court Receiver shall act accordingly.”

83.58 Hasan Miya Pansare and Abdul Kadir Kablay, who were parties to the said proceedings under section 145, Cr.P.C., as representing the Muslims of Mahad, went in revision to the D. M., Kolaba,

against the order of the S.D.M., being Criminal Revision Application No. 5 of 1970. By his order dated June 30, 1972 (Ex. MM 10) the D. M. has granted a stay of the execution of the said order of the Sub-Divisional Magistrate, Mahad, until the said Criminal Revision Application was disposed of.

83.59 No attempt has been made before me to show in what manner the entry in the Record of Rights for the year 1914 (Ex. P 1172) was made unauthorisedly or without following the procedure laid down in section 135D of the Bombay Land Revenue Code.

83.60 In my opinion, the judgment of the Sub-Divisional Magistrate, Mahad Division, does not in any way advance Savant's case. The legal effect of an order made by a Magistrate under section 145 Cr.P.C. came up for consideration before the Supreme Court in *Bhinka and others v. Charan Singh*, 1959 Supp. (2) S.C.R. 798, 808, 810. In this case the Supreme Court held that section 145 Cr.P.C. does not confer on a Magistrate any power to make an order directing the delivery of possession to a person who is not in possession on the date of the preliminary order made by the Magistrate under section 145(1) Cr.P.C. Under section 145(1), his jurisdiction is confined only to deciding whether any and which of the parties was on the date of the preliminary order in possession of the land in dispute. The order of the Magistrate only declares the actual possession of a party on a specified date and does not purport to give possession or authorize any party to take possession. Even in the case of any party who has been forcibly and wrongfully dispossessed within two months next before the date of the preliminary order, the Magistrate is only authorized to treat that party who is dispossessed as if he had been in possession on such date. Their Lordships of the Supreme Court further observed :—

“Under section 145(6) of the Code, a Magistrate is authorized to issue an order declaring a party to be entitled to possession of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is on apprehension of the breach of peace, and, with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is co-terminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court.”

Their Lordships cited with approval the following passage from the judgment of the Judicial Committee of the Privy Council in *Dinomoni Chowdhurani v. Brojo Mohini Chowdhurani*, (1901) L.R. 29 I.A. 24, 33, in which the effect of orders under section 145, Cr.P.C., was thus stated :—

“These orders are merely police orders made to prevent breaches of the peace. They decide no question of title.”

83.61 Section 157 of the Maharashtra Land Revenue Code, 1966,

which re-enacts the provisions of section 135J of the Bombay Land Revenue Code, 1879, provides :—

“An entry in the record of rights, and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.”

The presumption under section 157 of the Maharashtra Land Revenue Code, 1966, is a statutory presumption like the presumption under section 135J of the old Bombay Land Revenue Code, 1879. Though the entries in the Record of Rights are not determinative of the title to and proprietary rights in immovable property and do not debar any individual from any proprietary right or interest which he claims in any immovable property [*Nirman Singh v. Lal Rudra Partab Nakain Singh*, (1925-26) 53 Indian Appeals 220, 227], proper effect should be given to the statutory presumption arising with respect thereto [*Shankarrao Dagadujirao Jahagirdar v. Shambhu Nathu Patil*, (1941) 43 Bom. L.R. 1 P.C.]. No attempt has been made before me to prove that the entries in the Record of Rights in favour of the Muslim Jamaat are not true. The only attempt made to prove the ownership of the Mahad Municipality to the disputed site was by placing reliance upon the provisions of clause (e) of sub-section (2) of section 50 and clause (h) of sub-section (1) of section 54 of the District Municipal Act, 1901.

83.62 The contention of Savant based upon clause (e) of section 50(2) of the District Municipal Act was that under the said clause all Government lands vested in the Municipalities and for the said reason, the Mahad Municipality became the holder of survey No. 196A Hissa No. 1 which was formerly Government land (C.W. 29/6/3255). The relevant provisions of section 50(2) of the said Act are as follows :—

“All property of the nature hereinafter in this section specified and not being specially reserved by the State Government shall be vested in and belong to the Municipality, and shall, together with all other property, of what nature or kind soever, not being specially reserved by the State Government, which may become vested in the Municipality, be under their direction, management and control, and shall be held and applied by them as trustees, subject to the provisions and for the purposes of this Act; that is to say—

(e) all lands transferred to them by the Government or by gift or otherwise, for local public purposes.”

Thus under clause (e) of the said section 50(2) only the lands transferred to the Municipalities by the Government by gift or otherwise for local public purposes became vested in the Municipality and not all lands belonging to the Government. Savant has admitted that there is no notification, sanad or any other document by the Government transferring the disputed property from the Government to the Mahad Municipality or vesting it in the Mahad Municipality (C.W. 29/6/3255). This submission of Savant must, therefore, be rejected.

83.63 The contention of Savant based upon clause (h) of section 54(1) of the Bombay District Municipal Act was that under that

clause it was the statutory duty of the Mahad Municipality to provide a burial ground for the Muslims and it was in performance of the said duty that the Mahad Municipality had allowed the Muslims to bury their dead in the disputed property which belonged to the Municipality and, therefore, the fact that there is a Muslim burial ground on the disputed property is not and cannot be indicative of the ownership of the Muslim Jamaat. Under clause (h) of section 54(1) of the said Act, it was the duty of every municipality to make reasonable provision within the municipal district under its authority *inter alia* for "acquiring and maintaining, changing and regulating places for the disposal of the dead." Section 54 sets out a list of duties obligatory upon a district municipality. Merely because the section provides for certain duties to be performed, it does not, however, follow that all these duties have been carried out by each and every municipality. The disputed property appears to have been used by the Muslims as a burial ground even prior to the coming into force of the Bombay District Municipal Act. No evidence has been produced before me to show how and when the Municipality made this land available to the Muslims for a burial ground. Had in fact the Municipality made this land available to the Muslims, there would have been a record of it with the Municipality. It is inconceivable that out of all the sites available to it, the Mahad Municipality would make available to the Muslims for their burial-ground a site popularly known as Mahikavati and which, according to religious tradition amongst the Hindus of Mahad, was the site of an ancient temple of Goddess Mahikavati. The very fact that Muslim dead used to be buried in the disputed property and that there is a Muslim cemetery there would show that the land was in possession of the Muslim Jamaat and did not belong to the Mahad Municipality and that the Mahad Municipality was not exercising any rights over it and had not made it available to the Muslim Jamaat. This contention too must, therefore, be negated.

83.64 Thus the presumption arising in favour of the Muslim Jamaat under section 157 of the Maharashtra Land Revenue Code has not been rebutted before me and there is no reason made out why proper effect should not be given to this statutory presumption.

The possession of the disputed property

83.65 Unlike the question of title to the disputed property, the question of possession thereof does not present any difficulty. There is admittedly an old Muslim graveyard on the disputed property. The land could not have been used by the Muslims for burying the dead, had they not been in possession thereof. The improbability of the Mahad Municipality making available this plot of land, believed to be the site of an old Hindu temple, for a Muslim burial ground has already been pointed out. There are a number of graves in the open space surrounding the disputed structure and it has been fully utilized for burying the dead, so that the Muslims stopped burying more bodies there and started burying their dead in the burial ground in Gandharpal

Village. Even though the Muslims stopped using the disputed property as a burial ground, they continued to exercise their rights in respect thereof. They have regularly paid to the Government the revenue assessed in respect of the disputed property and have made such other use of the said land as it was capable of. Dr. Mrs. Kazi has deposed that on the occasion of the celebration of the annual Urs of Navre Pir, the Muslim Jamaat used to get the Navre Pir Dargah as also the disputed structure whitewashed and hoist religious flags (the 'Nishan' or green flags) on them [M.M.W. 1/1(3)/3317(1)-(2)]. Her evidence on this point has not been challenged and is corroborated by two other witnesses, namely, Ebrahim Chichkar (C.W. 30/13/3274) and Shujauddin Kazi (C.W. 31/5/3277), both of whom were summoned by the Commission and examined by it at the instance of Savant and who belonged to Savant's group and whose affidavits supported Savant's case. Abdul Kadir Kablay has also deposed to the same effect and has further stated that at the time of the Urs the disputed structure used to be illuminated (M.M.W. 3/12/3391). His evidence on this point too has not been challenged. Surba Tipnis has also deposed that for the last ten or fifteen years some persons had been getting a part of the disputed structure whitewashed though he denied any knowledge of the persons who were doing so (C.W. 47/8/3968). The fact that at the time of the Urs the broken walls used to be whitewashed is also mentioned in the editorial in the 24th April 1970 issue of the "Maharashtra Muslim" (Ex. P 1092). The panchnama of the disputed structure (Ex. P 1119) made on May 9, 1970 records the fact that the walls of the disputed structure have been whitewashed. The photograph illustrating the article "The Mahikavati Temple at Mahad" by Nivas Pore published in the 28th December 1969 issue of Navakal (Ex. P 1067) and the photographs taken by the Police on May 9, 1970 (Ex. P 1118 collectively) show the whitewashed walls of the disputed structure. Dr. Baburao Mehta (C.W. 46/7/3958) has, however, prevaricated on this point as on most other points. He first stated "I have not seen this structure whitewashed recently." Realizing that this statement would imply an admission that the disputed structure used to be whitewashed till recently he added "I do not remember whether it was whitewashed prior thereto." Realizing the equivocal nature of this answer, he sought to improve upon it by saying "I now say that I have not seen it whitewashed prior thereto." This witness throughout was interested in keeping back the truth from the Commission and his evidence on this point does not require to be taken into consideration except his statement that he had not seen the disputed structure whitewashed *recently* and the admission implied therein that prior thereto he had seen the disputed structure in a white-washed state.

83.66 The evidence led before me thus clearly establishes that at the time of the annual Urs of the Navre Pir Dargah the disputed structure used to be whitewashed, illuminated and flags of religious significance hoisted on it by the Muslim Jamaat, Mahad.

83.67 An important fact showing that the Muslim Jamaat was in

possession of the disputed property is that when in the proceedings under section 145, Cr.P.C., adopted by the Police, being Miscellaneous Case No. 40 of 1970, the S.D.M., Mahad by his order dated April 2, 1970 (Ex. P 1079) appointed Palkar, Revenue Circle Inspector, Mahad, as the receiver, possession was taken by Palkar from the trustees of the Mahad Jamaat, as is shown by the possession receipt dated April 16, 1970 (Ex. P 1080), which acknowledged that Sharif Ibrahim Tare on behalf of the Trustees of the Muslim Jamaat had handed over the disputed property to the receiver.

83.68 The fact that the Muslims have been in possession of the disputed property has not at any time been disputed by anyone. The Muslims had objected to the municipal proposal made in 1959 to convert the disputed property into a public garden on the ground that it belonged to the Muslim Jamaat (Ex. No. 80), which objection was accepted and acted upon by the Mahad Municipality by dropping the said proposal. Various articles and speeches also acknowledged the fact that the Muslims were in possession. A sub-heading in the said article "The Mahikavati Temple at Mahad" by Nivas Pore (Ex. P 1067) is "Land of the Temple Taken Forcibly." In the news item headed "The saffron flag unfurled on the Mahikavati Temple at Mahad amidst cheers for the Chhatrapati" in the 20th January 1970 issue of the Marathi daily the "Navashakti" (Ex. P 1074) it is stated :—

"The Mahikavati temple originally belonged to the Hindus, but the possession thereof went over to the Muslims since the year 1902 and now after 68 years the saffron flag of the Hindus is once again unfurled thereon."

In the article "Mahikavati of Mahad" : A Search Into The Real State Of Affairs" written by Savant and published in the 24th January 1970 issue of the Marathi daily the "Navashakti" (Ex. P 1075) it is stated :—

"Whatever might be the position in the past, the fact cannot be ignored that the said land has been in the possession of the Muslims for the last 70 to 75 years and that the Hindu community has not made any attempt to assert its right over that land."

In his evidence, however, Savant said, "Till 1970 the Muslims were using the disputed site but were not in possession of it." He admitted that there was a distinction between "using a property" and "being in possession of a property." He sought to explain away his statement in the said article by saying that he had used the word 'possession' rather loosely in the said article and that possession in the legal sense was slightly different from user. (C.W. 29/31/3265-6). The attempt made by Savant to explain away the admission made by him in his said article is not convincing, particularly when we find that while addressing the public meeting held on January 28, 1970 in Mahad he had stated (Ex. P 1076) :—

"If we institute legal proceeding their (Muslims') right will be established. But when we tell them as brothers they are willing to part with that land."

83.69 Other Hindu leaders of Mahad have also accepted the position that the Muslims were in possession of the disputed property, as is shown by the speeches made by them at the public meeting held on January 23, 1970. At the said meeting Dr. Baburao Mehta, who presided over the said meeting, said (Ex. P 1073) :—

“ Today’s meeting is regarding the temple of Mahikavati Goddess which is in the possession of the Muslims since 300 years. . . Since it is in the possession of the Muslims, we Hindus should be ashamed of it.”

On November 22, 1972 when he appeared in pursuance of the notice dated November 2, 1972, issued to him by the Commission, Dr. Mehta applied for and was granted time to file a supplemental affidavit. Though a copy of the report dated January 31, 1970 made on the said meeting by H.C., G. N. Mane, L.I.B., Mahad, to P.S.I., L.I.B., Alibag, along with the English translation thereof (Ex. P. 1073) was annexed to the said notice, he did not dispute in his said supplemental affidavit the correctness of his speech as reported in the said report. However, in his evidence before the Commission, he denied that he had stated at the said meeting that the Mahikavati temple was in the possession of the Muslims since 300 years. He further deposed (C.W. 46/7/3958) :—

“ I cannot say in whose possession it was or is, but it was not in the possession of the Muslims, but in the year 1906 some treacherous Talathi had entered it in the Record of Rights in the name of the Muslim Jamaat.”

A little later he admitted that he did not mention about “ the treacherous Talathi ” in the course of his said speech. The unsatisfactory demeanour of Dr. Mehta, his prevarications on several points and the unreliability of his evidence have already been mentioned. His denial of the correctness of the said report of the speech made by him (Ex. P 1073) is obviously false and the falsity of it is further shown by his first affidavit in which while referring to the Peace Committee meeting called by the President of the Mahad Municipality on January 22, 1970, he has stated (C.W. 46/1(2)/3952(1) :—

“ I observed that the Mahikavati Temple though in a dilapidated condition was a Hindu Temple from the times of the Yadav rulers and that the walls, the designs on the door, the Ganpati image (carving) and the Hemadpanti architecture was sufficient to show its Hindu origin. It was also observed that *the Muslims should be large hearted enough to restore the site to the Hindus* which would strengthen the bonds between the two communities.”

83.70 The question of the Muslims restoring the disputed property to the Hindus could not arise unless the Muslims were in possession thereof. Vasant Vinayak Bhagwat, the Secretary of the Kolaba District Jan Sangh, said at the said meeting held on January 23, 1970 (Ex. P. 1073) :—

“ This historic temple is in the possession of the Muslims since 200 years and as such since independence it ought to have been in our possession.”

In his affidavit (affidavit No. 382) Vasant Bhagwat has stated :—

“ . . . the Muslim community has committed trespass thereon and does not give it over to the Hindu community . . . ”.

Shantaram Shridhar Adivarekar, who belonged to the Jan Sangh, and Chunilal Mithabhai Sheth, who belonged to the Congress and who has been wrongly mentioned in the said report dated January 31, 1970 of H.C., G. N. Mane as Chunilal Mehta, both said at the said meeting that the disputed property was in the possession of the Muslims and the Hindus should get it.

83.71 In view of the tension created by the agitation in connection with the disputed property and by reason of the advice given to them by Savant and Mr. A. R. Antulay, the then Minister of State for Education, Law and Judiciary, Fisheries and Minor Ports, the Muslims of Mahad held a meeting on February 18, 1970 and decided to hand over the disputed property to the Government and accordingly by a letter dated February 19, 1970 (Ex. P 1132) signed by Shujauddin Kazi (C.W. 31), Ebrahim Chichkar (C.W. 30), Hasanmiya Shahabuddin Pansare and Alimiya Kamruddin Gantare, as representatives of and on behalf of the Muslim community of Mahad, gave to the Government of Maharashtra the “ right of ownership and vahiwat of the said land.” The question of the legal effect of this document will be dealt with at a later stage, but so far as the questions discussed in this chapter are concerned, had the disputed property not been in possession of the Muslims, one would have expected this move to have been met with ridicule or treated as an attempt by the Muslims to relinquish what did not belong to them in an endeavour to make out that they were the owners thereof. On the contrary, Savant, who in his evidence has alleged that the Muslims were not in possession of the disputed property, claimed credit for persuading the Muslims to hand it over to the Government (C.W. 29/1(24)/3552(23). At a public meeting held on February 27, 1970, presided over by M. R. Kalamkar, President of the Mahad Taluka Congress Committee, Savant said (Ex. P. 1086) :—

“ Mr. Antule suggested that this land be handed over to the Municipality. Accordingly, the Muslims went to Bombay and handed it over to the Government on the 19th instant. The Muslims deserve thanks for this and Mr. Savant who persuaded them to do this also deserved thanks but no one thanked me.”

The Shiv Sena, which was claiming that the disputed property was an ancient temple of Mahikavati, held a public meeting at Azad Maidan in Mahad on February 22, 1970. The Police Shorthand Reporter's report of this meeting is Exhibit P 1084. The Shiv Sena leader, Manohar Joshi, in the course of his speech said, “ The Mahikavati land was surrendered to the Government. I congratulate the Muslims.” This shows that even the Shiv Sena leaders accepted the fact that the Muslims were in possession of the disputed property.

83.72 If the disputed property belonged to the Mahad Municipality, as contended by Savant, it is difficult to understand why the Mahad Municipality allowed the Muslim Jamaat to pay the land revenue for

all these years or never took any effective steps to establish its title to the disputed property. The evidence shows that the Muslim Jamaat has been in possession of this property for over twelve years and in all probability for more than sixty years and the rights of all other parties appear today to be extinguished by adverse possession.

83.73 In this connection one more point of controversy requires to be mentioned. Savant has deposed (C.W. 29/31/3266) :—

“ Though the Muslims had stopped using it (i.e. the disputed property) as a burial place, they used to go there for taking air. Hindus also did the same.”

Abdul Kadir Kablay has denied this (M.M.W. 3/18/3391). Kablay's denial cannot be accepted for there is a clear admission to this effect in Dr. Mrs. Kazi's affidavit. She has stated, [M.M.W. 1/1(9)/3316 (4)] :—

“ The round about place (sic) of the said mosque and the cemetery was being actually enjoying (sic) as Chowpaty Seaface by both Muslims and Hindus. The road leading to the Gandhari Bridge by the side of the said mosque and the cemetery area has been in use for morning and evening strolls by Hindu couples and men, women and children of all ages and castes.”

The submission of Savant was that as the disputed property was used by the public for outings, it could not be of the ownership of nor in the possession of the Muslim Jamaat but belonged to and was in the possession of the Mahad Municipal Council. This submission cannot be accepted. The disputed property is situate at an elevation, affording a panoramic view of the two rivers and the surrounding hills, thus making an ideal place for morning and evening outings. According to Savant, the members of the public have been availing themselves of this opportunity only after the Muslims stopped burying their dead in the disputed property. This user by members of the public would, therefore, only be permissive user, but would not mean that by reason thereof the Mahad Municipality was or became the owner of the disputed property or acquired possession thereof. If the user were not permissive and was for longer than the prescriptive period, at the highest, the public might acquire certain rights of easement over the disputed property (a position not canvassed before me by any of the parties), but it would not mean the acquisition of any rights of ownership or possession or any other right by the Mahad Municipal Council.

83.74 The evidence led before me clearly establishes that the Muslim Jamaat, Mahad has been in possession of the disputed site for over twelve years, and even for more than sixty years, and the rights, if any, of all other parties therein appear to have been extinguished by adverse possession.

Conclusions

83.75 Having carefully considered all the evidence, both oral and documentary, led before me, the conclusions reached by me on the

point considered in this chapter are :—

- (1) The Hemadpanti style of architecture, the typically Hindu temple motif of the carvings on the stone pillars of the entrance, the first foot-note at page 344 of the 1883 Gazetteer of the Kolaba District and the note in the "Remarks column" of the Record of Rights for the year 1914 (Ex. P 1172) sufficiently establish the fact that the disputed structure was at one time a Hindu temple.
- (2) The temple was built when the Hemadpanti style of architecture was in vogue. It is, however, not possible to say at what precise time or by whom it was built.
- (3) It is not possible to say when and by whom the temple was desecrated or when it ceased to be used as a temple, but this must have happened prior to 1738.
- (4) The Award of the year 1738 establishes the fact that prior to that time, there existed in Mahad a mosque known as the Jumma Mosque to which were attached the rights of Pantavahood and ferry rights. The grant of the ferry rights in respect of this mosque indicates that the Jumma Mosque was situate at or near the Bunder or jetty. The grant of agricultural lands in village Gandhar by the Government by the Sanad dated April 20, 1865 also indicates the existence of the Jumma Mosque. The said mosque is pin-pointed as the disputed structure by the first foot-note at page 344 of the Gazetteer of the Bombay Presidency, Vol. 11, Kolaba and Janjira, 1883 Edition, and the revenue records.
- (5) The disputed structure was at one time turned into a battery and suffered a cannonade and its ruined walls and dilapidated condition are probably due to this fact.
- (6) The open space surrounding the disputed structure was used by the Muslims for a burial ground, though there is no evidence as to the time when this user commenced.
- (7) The user of the disputed property as a burial ground was discontinued about seventy years or so ago when no more place was left for new burials.
- (8) The disputed structure has not been used within living memory either by the Hindus or the Muslims for any religious purpose.
- (9) The Hindus of Mahad did not go to the disputed structure on the Coconut Day for breaking a coconut.
- (10) The existence of the Jumma Mosque on the disputed property shows that this property was in the possession of the Muslims prior to 1738 and the existence of the burial ground shows that it continued in their possession.
- (11) After the discontinuance of the user of the disputed property as a cemetery, the Muslim Jamaat, Mahad, continued to be in possession of the disputed property. It regularly paid the assessment in respect of the land and regularly whitewashed the disputed structure, illuminated it and hoisted flags of religious

significance on it at the time of the annual Urs of the Navre Pir Dargah.

- (12) The Muslim Jamaat, Mahad has thus been in open, peaceful, continuous and uninterrupted possession of the disputed property for more than twelve years, and even for more than sixty years, and the rights, if any, of all other parties, appear to have been extinguished by adverse possession prior to 1970.
- (13) The disputed property stands in the Record of Rights in the name of the Muslim Jamaat from the year 1914 onwards and the statutory presumption under section 157 of the Maharashtra Land Revenue Code, 1966, operates in favour of the Muslim Jamaat.

* * *

CHAPTER 84

THE MAHAD MUNICIPALITY AND THE DISPUTED STRUCTURE

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CHAPTER 84

THE MAHAD MUNICIPALITY AND THE DISPUTED STRUCTURE

The Mahad Municipality

84.1 A municipality was established in Mahad in 1866 (Maharashtra State Gazetteers, Kolaba District, 1964 edition, p. 853). On the Bombay District Municipal Act, 1901 (Bom. III of 1901) being applied to the town of Mahad, the Mahad Municipality functioned under that Act. On the coming into force of the Maharashtra Municipalities Act, 1965, it became a "C" Class Municipal Area known as the Mahad Municipal Council.

84.2 S. B. Savant was thrice elected Municipal President, namely, in 1943, 1952 and 1957. Surba Tipnis's wife had also successfully contested the 1957 municipal elections [C.W. 29/7/3255; C.W. 47/1 (9)/3965(6)].

The Sahar Seva Samiti

84.3 In 1957 there were two groups in the Mahad Municipality, one the group led by Savant and the other the opposition group which styled itself the Shahar Seva Samiti. Tipnis, who was a member of the Shahar Seva Samiti ever since its inception, has deposed how it came to be formed. At the time of the 1957 municipal elections Savant in his capacity as the President of the Mahad Taluka Samyukta Maharashtra Samiti selected candidates of his own choice. Those who were displeased at his selections thereupon formed a separate group called the Shahar Seva Samiti for the express purpose of fighting the municipal elections. In the 1957 elections out of the 19 seats in the Mahad Municipality Savant's party secured ten seats and the Shahar Seva Samiti secured the remaining nine seats. Tipnis has deposed that the Shahar Seva Samiti consisted of persons of all castes and communities including the Muslims and of all political shades of opinion including the Mahasabhis, the P.S.P., the Congress workers and some Congressmen who did not agree with Savant (C.W. 47/4/3966).

Savant's role according to Tipnis

84.4 In paragraph 26 of his affidavit Surba Tipnis has alleged as follows. [C.W. 47/1(26)/3965(15)] :—

“With reference to the dispute regarding the Mahikavati temple it has been admitted by Mr. Sawant that it has started in 1945 when he was elected the President of the Mahad Municipality much before the birth of Shiv Sena. . . . It is very pertinent to note that after 1945

the question arose in 1960 when Mr. Sawant joined the Congress and now again arose before the Parliamentary elections.” In his evidence Tipnis has elaborated on what according to him happened in 1945. He deposed (C.W. 47/6/3967) :—

“ In 1945 immediately after Savant was elected as the Municipal President, he suggested that a statue of Shivaji should be put up at the disputed site as it was the entrance of the town. Nothing came out of this suggestion. When the development plan was drafted in 1959 Savant again brought forward the proposal for a public garden.”

84.5 Apart from this allegation made by Tipnis, there is no other material before the Commission which shows that any such proposal was made in 1945 by Savant or by anyone else. No Muslim witness has stated this. There is no such admission in Savant's affidavit or evidence as alleged by Tipnis. There is considerable personal animosity between Savant and Tipnis as mentioned in Chapter 82 and it is clear that the object of Tipnis in making the said allegation is to create an impression that the moment Savant got a position of power, he raised a controversy with respect to the disputed property. This is borne out by the concluding sentence of the above-quoted passage from Tipnis's affidavit, namely :—

“ It is very pertinent to note that after 1945 the question arose in 1960 when Mr. Sawant joined the Congress and now again arose right before the Parliamentary elections.”

The dates and the sequence mentioned in the said sentence are incorrect and the 'question' did not arise in 1960 but in 1959. The Municipality dropped the proposal on November 29, 1960, and Savant joined the Congress at the end of 1960 (C.W. 27/7/3255). Thus the proposal had been made and the application to correct the revenue records and the C.T.S. records filed and the controversy had developed prior to Savant joining the Congress. In the Parliamentary mid-term elections, which took place in February 1971, Savant stood as a Congress (R) candidate for the Lok Sabha from the Kolaba Constituency and was elected (C.W. 27/2/3253). The decision to hold the mid-term elections was not announced till the latter half of 1970. The controversy with respect to the disputed place raised by Bal Thackeray was not “right before the Parliamentary elections” but in November 1969 on which date there was no indication that the mid-term Parliamentary elections would be called. In view of these facts it is not possible to accept Tipnis's allegation that the controversy first arose in 1945 or that Savant had made a proposal in 1945 to erect a statue of Shivaji on the disputed property. It is obvious that Tipnis has made the above allegations deliberately in an attempt to discredit his political opponents, namely, Savant and the Congress.

The proposal for a public garden

84.6 During the third tenure of Savant as Municipal President, in 1959 a proposal was brought forward for converting the disputed

property into a public garden. How this idea originated and what happened to this proposal has been related by Savant [C.W. 27/1(12)/3252(9-11), 8/3255-8].

84.7 In about 1958 or 1959 the Mahad Municipality wanted to introduce a development plan for Mahad. An officer from the office of the Deputy Consulting Surveyor, Kolhapur, came to Mahad to advise the Mahad Municipality on the preparation of the said development plan. He had gone for a walk one evening to the Bunder Naka and he mentioned to Savant that the disputed property would make a good site for a public garden. Savant thereupon took up the matter in the sub-committee appointed by the Municipality for preparing the development plan. The sub-committee consisted of three members, two of them belonging to the majority party, namely, Savant's party, and the remaining member belonging to the opposition party—the Shahar Seva Samiti. On May 13, 1959 the sub-committee resolved that “a garden should be laid out at the site of Mahikawati, that is to say, at the site of City Survey Property No. 337” (Ex. No. 76). At a meeting of the sub-committee held on June 19, 1959 it was further resolved that some more land to the east and west of the disputed property should also be utilized for the proposed public garden. The draft development plan was sent to the Deputy Consulting Surveyor, Kolhapur, for his approval. He suggested certain changes which were accepted and on August 13, 1960 the Mahad Municipality unanimously approved the draft plan and directed that suggestions and objections should be invited from the public (Ex. No. 78).

84.8 Shujauddin Kamaluddin Kazi (C.W. 31), then a Municipal Councillor, was present and voted in favour of the aforesaid resolution. Another Muslim Councillor, Ebrahim Chichkar (C.W. 30), had also approved of this proposal. At that time Chichkar and Shujauddin Kazi both belonged to the Shahar Seva Samiti (C.W. 30/12/3273 and C.W. 47/4/3966). The draft plan, as published (Ex. No. 79) contained the following proposal with respect to the proposed public garden on the disputed property :—

“A garden be developed on the entire area namely the site of Mahikawati that is to say C.S. Property No. 337 (that is to say Survey No. 196-A, Hissa No. 1), C.S. Property No. 338 (that is to say Survey No. 197) and some part of Hissa No. 2 of R.S. 196-A.”

84.9 The notice inviting objections to the said draft plan was published on August 15, 1960. Though none of the Shahar Seva Samiti Councillors had objected to the proposal for a public garden on the disputed property, on October 25, 1960 a public meeting was held by the Shahar Seva Samiti at which it was resolved that the draft plan, particularly the proposal to convert the disputed property into a public garden, should be opposed. This meeting was held under the Chairmanship of D. V. Purohit *alias* Nana Purohit, the P.S.P. leader. It was attended by the Muslims and the members of the Jan Sangh and the P.S.P., all of whom opposed the proposal to convert the disputed property into a public garden. On October 28, 1960, that is within three

days of the said meeting, Abdul Kadir Kablay (M.M.W. 3), Kazi Abbas Gulam Moyuddin and some other Muslims on behalf of the Mahad Muslim Jamaat lodged a written objection to the said proposal. Another objection to the same effect was lodged on October 31, 1960 by Abdul Kadir Kablay, Mohamed Sharif Abdul Rahiman Havaladar and some other Muslims in their capacity as Trustees of the Jumma Mosque, Mahad Bunder. Both these objections were on the ground that the said site did not belong to Mahikavati but belonged to the Muslim Jamaat and a garden should not be developed thereon for, if a garden were developed, the religious sentiments of the Muslims would be hurt. In view of these objections and opposition, the Mahad Municipality resolved at its meeting held on November 29, 1960 that a garden should not be developed on the disputed property (Ex. No. 80). According to Savant and Chichkar [C.W. 30/1(4)/3270(1)], at the time of the said public meeting held on October 25, 1960, there was a municipal by-election in the very ward in which the disputed property is situate and in order to attract the Muslim votes, Nana Purohit and Surba Tipnis, the P.S.P. leaders, and Vasant Bhagwat and Shantaram Shridhar Adivarekar, the local Jan Sangh leaders, initiated this opposition move and set up the Muslims to claim it as the site of an old mosque. Shujauddin Kazi [C.W. 31/1(6)/3276(4-5)] has also stated, “. . . . the leaders of the P.S.P. and the Jana Sangh took the help of some of us and opposed the resolution thereafter.”

84.10 After the said proposal was dropped, Savant wrote a letter dated December 29, 1960 explaining to the Deputy Consulting Surveyor to the Government of Bombay, Kolhapur, why some of the proposals in the draft plan were dropped by the Municipality. With respect to the proposal for a public garden on the disputed property, Savant stated in the said letter :—

“ This proposal has created a tremendous misunderstanding in the general public. Interested persons even went to the length of fanning hatred which was likely to endanger the peace of the town. The Muslims opposed it in a body and strangely enough some of the R.S.S.-minded Hindus attacked it from public platform though they were shrewd enough not to put their objections in writing. It is, therefore, considered prudent to drop the proposal altogether.”

84.11 Dr. Baburao Mehta and Surba Tipnis have both deposed about the opposition to said proposal. The evidence of Dr. Mehta on this point makes strange reading. He has deposed (C.W. 46/6/3956) :—

“ I know that in 1960 there was a municipal proposal to have a public garden at the disputed place. I do not know what happened to that proposal.”

This show of ignorance on his part appears to be feigned. Dr. Mehta was and is one of the prominent local leaders of Mahad and appears to have taken an active part in all matters relating to Mahad. Mahad is a small town of which the population in May 1970 was about 13,650 only and in 1960 it must have been less. It is not possible that Dr. Mehta

would not know about the opposition to a proposal which was made indirectly a plank in a municipal by-election. This is only one of the several instances where Dr. Mehta has not given a frank or an honest answer to the Commission, but has been evasive and has prevaricated.

84.12 Tipnis, who has since its formation in 1957, been a member of the Shahar Seva Samiti, has deposed (C.W. 47/5/3967) :—

“ At the Government’s suggestion the Mahad Municipality prepared a development plan for Mahad Town. We in the Shahar Seva Samiti considered the plan and we came to learn that one of the proposals was to convert the disputed site into a public garden. As this place was at the extreme end of the town and would be at a considerable distance for most residents of the town, we opposed this proposal. We opposed this proposal only on the ground of inconvenience to the public. I do not know all the details relating to the opposition to this proposal.”

It is difficult to accept the ground for opposition to this proposal as deposed to by Tipnis. The area of Mahad town is only about 1.5 square miles. The disputed property, even though situate at one end of the town, can hardly be said to be at a considerable distance from any other point in the town or at a considerable distance for most residents of the town. A number of residents must in the normal course have been going to the Bunder Naka or to the river bank to take the air and according to the evidence of Savant (C.W. 29/31/3266) and Dr. Mrs. Qumar Kazi [M.M.W. 1/1(9)/3316(4)] they, in fact, had been doing so and to say that a public garden on this site would be inconvenient to most residents of the town does not stand to reason and cannot be believed. The Muslim witnesses do not bear out what Tipnis has stated. Further, it is significant that within three days of the said public meeting held by the Shahar Seva Samiti, the Muslims, who till then had not raised any objection to the said proposal, should have lodged their objection to it on the ground that the disputed property belonged to the Muslim Jamaat, Mahad, and that if a garden were developed thereon, the religious sentiments of the Muslims would be hurt.

84.13 It is also important that no one came forward at that stage to contend that this was the site of an ancient Hindu temple, but, on the contrary, all the Hindu members of the Mahad Municipality, including those in the opposition and in the Shahar Seva Samiti, accepted the Muslim contention that the disputed property belonged to the Muslim Jamaat and that turning it into a public garden would hurt the religious sentiments of the Muslims.

The application for registration of the Jumma Mosque Trust

84.14 Certain proceedings which took place during the pendency of the proposal to convert the disputed site into a public garden now require to be noticed. The first of these proceedings was the application for registration of the Jumma Mashid Mahad Bunder (Padki Mashid) Public Trust under the Bombay Public Trusts Act, 1950 and the other was the application made by the Mahad Municipality for correcting the

revenue records by bringing its name on the record as the owner of the disputed property in place of the Muslim Jamaat, Mahad.

84.15 On November 18, 1959 Abdul Kadir Kablay (M.M.W. 3) made an application under the Bombay Public Trusts Act, 1950, for registration of a public trust, namely, "The Jumma Mashid Mahad Bunder (Padki Mashid) Public Trust." (Ex. MM 4). The names of the Trustees mentioned in the said application were :

- (1) Abdul Kadir Shaikh Hasan Kablay (M.M.W. 3),
- (2) Shahabuddin Miya Pansare,
- (3) Sherif Shaikh Ibrahim Tare,
- (4) Mahomed Sharif Abdul Rahiman Havaladar.

The mode of succession to trusteeship was mentioned as "annual election by the Mahad Muslim Jamaat". The said application mentioned the objects of the Trust as being "to arrange for prayers and religious education". The only document mentioned in the said application as creating the said Trust was the said Award of the year 1738 (Ex. MM 7) which was described in the said application as a Sanad. The immovable properties belonging to the said Trust were shown as the agricultural land bearing Survey No. 2A, Hissa No. 4 of Village Gandhar in Taluka Mahad of the value of about Rs. 100 and the Devasthan Inam described as "dilapidated mosque and graveyard" bearing C.T. No. 337, Survey No. 196A, Hissa No. 1 situate in Mahad. The average gross annual income was shown as Rs. 25 and the average annual expenditure was also shown as being the same and was mentioned as being expended on religious objects. The said Trust was registered on June 30, 1960 (Exs. MM 5 and MM 6).

84.16 Savant has disputed the genuineness of this Trust. In Chapter 83 (paragraphs 83.22 to 83.25) under the heading, "Whether the non-Muslim parties are barred from contending that the disputed structure was not a mosque?", I have considered and rejected the contention raised by the Muslim parties that by reason of the registration of the said Trust under the Bombay Public Trusts Act, 1950, it was not open to any party to contend before the Commission that the disputed structure was not a mosque or that the Muslim Jamaat, Mahad, was not the owner thereof. In view of this finding given by me, I will now proceed to consider the question of the genuineness of the said Trust. Kablay has admitted that there is no Peshimam or Bangi of the disputed structure. He has further admitted that no accounts are kept of this Trust and that the trustees were last appointed in March 1959. He has also admitted that there is no document or any written proceedings of the Muslim Jamaat, Mahad, to show that any trustees were at any time appointed for the said Trust. He has deposed that there are no trustees of the Jamaat, but the Jamaat has a 'Mutavali' who was looking after its affairs. He has further admitted that no income is derived from the disputed property and that the only expenditure incurred on it was at the time of the Urs of the Navre Pir Dargah for whitewashing the disputed structure and putting up illuminations and the 'Nishan' (green flag) on it (M.M.W. 3/12/3390-1).

84.17 If Kablay and the three other Muslims mentioned in the said application for registration (Ex. MM 4) had been appointed trustees by the Muslim Jamaat, Mahad, there would have been a written record thereof. The Muslim Jamaat, Mahad, maintains a written record of its proceedings and extracts of some of these proceedings have been produced before the Commission by Abdulla Mapkar (M.M.W. 2). Kablay was shown the minutes of the meeting of the Jamaat held on August 23, 1964 by which certain trustees were appointed and he has deposed that these minutes were in respect of the appointment of the trustees of the Sultan Jamai Masjid (M.M.W. 3/12/3391). If Kablay and the three others were appointed trustees of the said Trust by the Jamaat, as alleged by Kablay, there is no reason why there should not have been a record of it in the books of the Jamaat as there is in the case of the appointment of the trustees of the Sultan Jamai Masjid. The reason why the said application for registration was made is quite obvious. It was made as a counter-move against the said proposal of the Mahad Municipality to convert the disputed property into a public garden. Kablay and the three others mentioned in the application for registration were not the trustees of the Muslim Jamaat, Mahad, since that Jamaat had no trustees. There is nothing to show that these four persons were at any time appointed trustees of this trust by the Muslim Jamaat, Mahad, or that they were at any time authorized by it to make the said application. This move, therefore, did not bear the sanction of the Muslim Jamaat, Mahad, but seems to have originated with a handful of Muslims who took upon themselves to get a public trust registered in respect of the disputed property. Until, however, the entries in the Register of Public Trusts are rectified and the necessary changes made therein or until a Civil Court finally decides the matter, the Muslims would be entitled in law to rely upon the fact of registration of this trust and the legal effect of such registration and the entries relating to the said Trust in the Register of Public Trusts.

The Municipality's application for making changes in the revenue records

84.18 On January 19, 1960, the Secretary of the Mahad Municipality made an application to the City Survey Officer and Mamlatdar, Mahad, to delete the name of the Muslim Jamaat, Mahad, and in its place to enter the name of the Mahad Municipality as owner of the disputed property, both in the revenue and the C.T.S. records. It appears from the order dated July 22, 1961 (Ex. P 1061) passed on the said application by the City Survey Officer and Mamlatdar, Mahad, that in the said application made by the Municipal Secretary and in the statement dated June 11, 1960 given by him, it was contended that there was a temple known as the Mahikavati Temple in a ruined condition on the disputed property and that at no time was there any mosque thereon. From the said order it further appears that Abdul Kadir Kablay (M.M.W. 3) had appeared in the said inquiry on behalf of the Muslim Jamaat, Mahad and had contended that there was a mosque situate on

the disputed property. The City Survey Officer and Mamlatdar held that neither party had proved its case and that as in the 1906 survey the name of the Muslim community had been entered as owner by reason of its possession and user of the disputed property as a graveyard, no change as asked for by the Municipality could be made in the revenue and C.T.S. records and the Municipality might seek redress in a competent court having jurisdiction. The relevant passages from the said order have already been quoted in Chapter 83.

84.19 After the said order was passed, the Mahad Municipality took no steps to have it set aside. It neither went in appeal or revision nor filed a suit to establish its title to and ownership of the disputed property. Savant was the Municipal President at that time. In his evidence he has given two reasons why the Mahad Municipality did not do so. The first reason given by him was that if the said order were carefully read, it would be found that the City Survey Officer and Mamlatdar had made the order contrary to his own finding and the said order was, therefore, a nullity and the Municipality was not under any obligation to challenge it. The second reason given by him was that when the Municipality made the said application it was only a property dispute but later it turned into a communal dispute and therefore to have gone in appeal or revision would have aggravated communal tension (C.W. 29/31/3267). In support of the first reason given by him, Savant relied upon a Full Bench decision of the Bombay High Court in *Abdullamiyan Abdulrehman v. The Government of Bombay*, 44 Bom. L. R. 577 F.B. This decision lays down that where an authority which purports to pass an order is acting without jurisdiction, the purported order is a mere nullity and it is not necessary for anybody, who objects to that order, to apply to set it aside, but he can rely on its invalidity when it is set up against him. This decision has no bearing on the question. It is not possible to contend, nor is it contended before me, that the order of the City Survey Officer and Mamlatdar, Mahad, was without jurisdiction or that he did not have the jurisdiction to pass the order which he did. What is contended is that the said order is erroneous. If so, the Mahad Municipality, if it wished to challenge the correctness of the said order, was bound to adopt proceedings to get it reversed in appeal or revision or to approach a Civil Court for a final determination of the rights of the parties.

84.20 There, however, appears to be considerable force in the second reason given by Savant. Savant has admitted when questioned by the Commission that the Municipality's said application was made in order to obviate the necessity for paying compensation for acquisition of the disputed property for the purpose of turning it into a public garden. The opposition group in the Mahad Municipality—the Shahar Seva Samiti—consisting of persons of different shades of political opinion and belonging to different political parties, which had originally supported the said proposal, later saw in it an opportunity to win the by-election in the ward in which the disputed property was situate, by playing upon the religious sentiments of the Muslims. Savant and his group

must have realized that this move on the part of the opposition would jeopardize the chances of any candidate put up by their party from the said ward and would cost them the Muslim votes in this by-election and in the future, and they, therefore, dropped the said proposal. The said proposal was dropped by the Mahad Municipality on November 29, 1960 prior to the said order of the City Survey Officer and Mamlatdar, Mahad. Further, Savant does not appear to have been very sure of the legal position as is shown by his statement in the public meeting held on January 28, 1970 that if they instituted legal proceedings, the right of the Muslims would be established (Ex. P 1076).

The real nature of the controversy

84.21 It was contended by the Muslim parties and Surba Tipnis that Savant was the first to raise a communal controversy with respect to the disputed property. Savant has denied this and, on the other hand, contended that the disputed property for the first time became a bone of contention between the Hindus and the Muslims on October 25, 1960 when the Shahar Seva Samiti held a public meeting to object to the Municipality's said proposal to convert the disputed property into a public garden (C.W. 29/31/3266). The proposal to convert the disputed property, which was then not being used by the Muslims as a graveyard or for any religious purpose, cannot be said to have been communally motivated or to have a communal basis. This site is on an elevation commanding a pleasing and refreshing vista of the two rivers, the Savitri and the Gandhari. In none of the Muslim affidavits is there any allegation that this move by the Mahad Municipality to convert the disputed property into a public garden or to have it transferred to the name of the Municipality was actuated by any communal motive, though, in fact, this move did result in communal tension and Abdul Kadir Kablay and the three other Muslims were led thereby to make the said application for registration of "The Jumma Mashid Mahad Bunder (Padki Mashid) Public Trust" and the Muslims filed their objection to the proposal to convert the disputed property into a public garden on the ground that this would hurt their religious sentiments. The said objection by the Muslims was, however, raised only after the public meeting of October 25, 1960 held by the Shahar Seva Samiti. It is obvious that the Muslims were inspired to object to the said proposal by the members of the opposition group. There are several old cemeteries and burial-grounds in many places, including Bombay, which have been converted into public gardens by the municipalities, and merely because in this particular case the controversy took or was rather given a communal turn, it cannot be said that the said proposal was communally inspired. It is true that in the said application made by the Secretary of the Mahad Municipality it was contended that the disputed structure was a ruined temple and was not at any time a mosque. This contention was, however, not raised with a view to foment communal tension or to bring about communal disharmony, but in an attempt to make out a case for the

Municipality and to show that the Muslims were not the owners of the disputed property and thus to avoid paying compensation for the acquisition of the disputed property. It was not Savant and his group but the Shahar Seva Samiti which gave a communal turn to this controversy and inspired the Muslims to make it a communal issue with the object of securing the Muslim votes in the municipal by-election. That this controversy was basically not of a communal nature is shown by the fact that soon after the Municipality dropped the said proposal, the controversy died out.

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CHAPTER 85

THE SHIV SENA AND THE DISPUTED STRUCTURE — THE FIRST PHASE

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CHAPTER 85

THE SHIV SENA AND THE DISPUTED STRUCTURE — THE FIRST PHASE

The Durgadi Fort incident

85.1 The formation, constitution and objectives of the Shiv Sena have already been referred to in Chapter 25 (paragraphs 25.1 to 25.4) and it is unnecessary to repeat them here. One of the activities of the Shiv Sena was in relation to a structure at the Durgadi Fort at Kalyan in the Thana District. According to the Hindus the said structure was a temple, while according to the Muslims it was a mosque or, in any event, a wall of the said structure was an Idga. The Muslims further claimed that they had been offering Id prayers at the said place for the several years (Ex. G 99). Realizing the opportunity such a situation afforded for enhancing its political power and prestige and for holding itself out as the champion of Hinduism and the Hindus, the Shiv Sena took a hand in this dispute. As the Shiv Sena agitation in connection with the disputed structure at Mahad can be properly understood only in the background of the Durgadi Fort incident, it is necessary first to deal with the activities of the Shiv Sena in relation to the said structure at the Durgadi Fort.

85.2 On September 8, 1968 the Shiv Sena Chief Bal Thackeray along with some of his followers went to the Durgadi Fort and broke a coconut there. A public meeting was thereafter held in the evening at Subhash Maidan, Kalyan. A copy of the Police Shorthand Reporter's report of the said meeting is part of Appendix A to the note filed by I.G.P., Rajadhyaksha on the activities of the Shiv Sena (Ex. G 99). About 12,000 persons attended the said meeting. Datta Salvi was the first to speak. In the course of his speech he said :—

“Shiv Sena has given justice wherever injustice was done. We had all been to Durgadi Fort and had broken a coconut there. It is a historic place. There are some persons who do not care for society or religion. They should be treated accordingly. . . . Maharashtra is the only State which is tolerating injustice. . . . The Shiv Sena is born to create new history. It would resist if the Marathi people are insulted. . . . The Government should not remain indifferent, otherwise it will be destroyed. Insult to the deity at the Fort would be treated as insult to Maharashtra.”

85.3 The next speaker, Manohar Joshi, said in the course of his speech :—

“When we came to Durgadi Fort we noticed police guard and somebody told us that we should not go as we would be stopped.

Nobody, however, obstructed us when we went on the fort because we had gone there to worship the God. All evil forces will be unroofed by the Shiv Sena. . . . I say to the people of Kalyan that they should not be afraid. People from minorities and South Indians should mix and stay with us. Muslims who are pro-Pakistanis will not be allowed to remain in India.”

85.4 The Shiv Sena Chief, Bal Thackeray then addressed the audience. In the course of his speech he said :—

“ We are in Kalyan since morning. We had been to Durgadi Fort and noticed police guard there and also learnt that section 144 Cr.P.C. was in force. In spite of the situation, we went to Durgadi Fort to have a ‘ Darshan ’ of the God and break a coconut there. When I came to Kalyan in the morning a police-officer came to me and assured police co-operation and also requested similar co-operation from me. He told us that the size of sticks of the flags should not be more than 2½ feet and should be small. It is not known how this rule was applied to Kalyan; our big flag could not be accommodated on a small stick of 2½ feet. Still I agreed with him. . . . I wonder at the propriety of imposing section 144 Cr.P.C. and the posting of policemen around the Durgadi Fort and from all these things one feels how weak we are. . . . Muslims at Kalyan presented an address to Shri Krishnarao Dhulap who would not mind selling his own mother if only to secure 6,000 votes of the Muslims. If the Police would have obstructed me while going to Durgadi Fort, I would have contravened section 144 Cr.P.C. to have a Darshan of my God in a Hindu temple. Repression under the law is becoming intolerable. . . . Muslims are having a monopoly in Kalyan and Bhiwandi. When the Government decides to give some rights to a particular community, even white colour given to any building encourages the Muslims to consider it as their mosque and Shri Dhulap supports them. . . . It is not known what the Government has gained by applying section 144 to Durgadi Fort. If all the Marathi people desire, they would secure all the rights concerning the temple on Durgadi Fort. Shri Gandhi and Nehru caused enormous damage to India. . . . Shri Vasant Rao Naik is a gentleman but he is not firm in administration. The dispute in Kalyan should be settled by him by calling people from both parties for giving justice. . . . Those who want to destroy us will be destroyed by us. Who are they (the Muslims) to decide the route of the Ganpati procession ? ”

85.5 It will be noticed from the above speech made by Bal Thackeray that he claimed to have committed a breach of the order under section 144 Cr.P.C. and further claimed that even though such an order was in force, the Police did not obstruct him while going to the Durgadi Fort. However, from the evidence of S. V. Bhawe, S.P., Thana it is clear that an order under section 144 Cr.P.C., prohibited entry to the site of the Durgadi Fort, had not been issued and that the only order under section 144 Cr.P.C. which had been issued was an order prohibiting any repair or colour-wash of the said structure

at the Durgadi Fort or the making of any change therein or its demolition (P.W. 4/185/696). Thus, in entering the Durgadi Fort, Bal Thackeray did not commit a breach of any order under section 144 Cr.P.C. This claim made by Bal Thackeray is relevant in view of a hotly disputed question in this Inquiry, namely, whether an order under section 144 Cr.P.C. prohibiting the entry of Bal Thackeray and his followers into the disputed property at Mahad had been promulgated or not.

85.6 The next public meeting at Kalyan organized by the Shiv Sena which was addressed by Bal Thackeray was on September 29, 1968. This meeting was held in the evening at the Durgadi Fort itself and about 8,000 persons attended it. A copy of the Police Shorthand Reporter's report of the said meeting is part of Appendix A to Exhibit G 99. At the said meeting Datta Salvi in the course of his speech said :—

“ If the history of Chhatrapati Shivaji Maharaj were examined, we would not find even a single incident of injustice during his reign. But today such a situation has been created that we cannot even express our religious feelings. I say that the Shiv Sainiks will not tolerate this situation. I declare that the Shiv Sainiks have surrounded the Fort of Durga Mata and no power in the country can repulse them. . . . We shall uproot those who would put obstacles in the way of the Durga Mata Festival. . . .”

85.7 Bal Thackeray in the course of his speech said :—

“ If we cannot protect our religion under the present rule, then how could the British Government be said to be bad? When our own Government is bringing calamity upon us, we cannot refrain from saying that such a rule should be condemned. . . . Playing ‘Sehnai’ in a temple is not being allowed while a loud-speaker is allowed (in mosques), and all this is being done in the name of secularism. The word ‘secularism’ is not found in the Constitution and if it is there, Smt. Indira Gandhi should point it out. This word has come out of the head of the late Pandit Nehru. It is better not to say what Pandit Nehru was. Vallabhbai himself has stated about him. Calamities are befalling us today because of the undue importance attached to the word “Secular State” and “Minorities”. People blame the Police, but I want to say that since the meaning of “Secular State” has not been understood by rulers, how it could be understood by the Police, and there is uproar about it everywhere. . . . When India achieved freedom, the country was divided and another independent State was created and in spite of this, minorities in the country were encouraged and thereby we have placed ourselves in difficulties. If national integration is required in the country, then all those who live in this country should accept that they are Indians. But does this take place? If we think over this, then this is not taking place. When Pakistan committed aggression on India, which Muslim condemned it? Was there any Muslim who said that the aggression by Pakistan will be avenged? . . . Brothers, Durga-Mata Temple will be raised on the hill where we

are now seated and all of us will have to sacrifice for that purpose and we should be conscious about our rights and be ready for sacrifices. 'Durga Mata' is ours and I ask her to tell us how much human sacrifice she expects and we are prepared to shed blood. . . . Those who want to live in India must stay as Indian citizens. If they do not wish to stay as Indian citizens they should go out where they have their homes. It would become necessary to launch a movement to make those people who are not loyal to India, to leave India. 'Pakistan Zindabad' slogans are being raised while living in India. These people should be awarded punishment meant for traitors. In a war a Jawan kills the forces of the enemy but it is not considered as murder, since it is his duty to kill enemy forces, and the same thing can be said in respect of traitors. . . ."

85.8 Another public meeting organized by the Shiv Sena was held at the Durgadi Fort on October 12, 1969 in the evening. On that day an order under section 144 Cr.P.C. was promulgated banning the entry of five or more persons in certain sensitive localities of Kalyan (Ex. G 99). About 10,000 persons attended the said meeting. The shorthand report of P.S.I., Karyatkar on the said meeting is Exhibit P 535. From the speeches made at the said meeting it appears that October 12, 1969 was the commencement of the Durga Festival. Before the said meeting Bal Thackeray offered prayers at the Durgadi Fort. Datta Salvi in the course of his speech, referring to Bal Thackeray, said :—

"Chhatrapati Shivaji Maharaj founded Hindavi Swaraj when it was not possible to live as a Hindu. I say that now Shivaji Maharaj is present here and is seeing how his Marathas are and how his Maharashtra is. . . . It appears that we are living in the 20th Century democratic period. We must care for the good and evil. Yet we cannot live without our religion. Therefore whenever our religion is in danger we shall protest at the cost of our life. . . . The Shiv Sena was born to get the injustice to the Marathi man and his religion redressed. The Shiv Sena is conducting itself with that determination. . . . We have come for the Darshan of Mother Bhavani. We have not come here to do injustice to anyone. If anybody comes in the way of Mother Bhavani's Darshan, we shall kick him like a football."

85.9 Manohar Joshi, who also was a speaker at that meeting, in the course of his speech, said :—

"This meeting is against the injustice that is being done to us. There was a news item in the Press that the Government has banned the Goddess Durga Festival by enforcing section 144. I know that the Durgadi Fort belongs to the Hindus. It does not belong to anybody's father. After reading the news that section 144 was enforced for Durgadi, Balasaheb Thackeray asked me, 'Joshi, what shall we do?' I immediately told him, 'Let us violate section 144 and hold a Shiv Sena meeting in the premises of the Durgadi Fort' and accordingly Balasaheb issued a statement, 'Let us violate section 144

and worship Goddess Durga.' The next day there was a report that the Government had lifted section 144. . . . The rulers have given undue importance to the minority community. They are being connived at when they are doing anti-national acts. If Al-Aqsa Mosque is burnt in Israel, a procession of one lac Muslims is taken out in Bombay. Only we launched a tirade of criticism against it. . . . Only the 'Marmik' stood against it. If the Muslims behave with national feeling, we shall not allow them to be harmed even slightly. It is our view that they can live with us only if it is so."

85.10 Finally, Bal Thackeray addressed the audience. He said that he had not intended to visit Kalyan that year, but when he learnt that prohibitory orders under section 144 Cr.P.C. had been passed, he decided not only to go to Kalyan but to perform 'Arati' at the Durgadi Fort. He criticized the Police for attempting to stop the Shiv Sainiks from going to the said meeting carrying saffron flags tied to sticks. Continuing he said :—

"The Hindu is awake. . . . Let the Shiv Sena come. It is a banner of religion. The Police should respect it."

He then referred to the taking out of the procession in Bombay to protest against the burning of the Al-Aqsa Mosque. In the course of his speech he further said :—

"I want to tell the Muslims that they have secured their share by partitioning the country. I warn them that they will not get any piece of land. No one will dare touch you if you remain loyal to this country, but if you stay here with false pride and spread Islam we will not fail to cut off your hands."

He then referred to family planning and said :—

"Family planning must be implemented but it must be applied to one and all. Otherwise our population will go down and theirs will increase."

85.11 S. V. Bhawe, S.P., Thana, referred the question whether the speeches made at the said meeting were actionable to Mr. S. M. Tamhane, Public Prosecutor, Thana. By his letter dated October 30, 1969 addressed to the S.P., Thana (Ex. P 536), Mr. Tamhane opined that he did not find anything seriously objectionable in the speeches of the speakers, except that of Bal Thackeray; because, according to him, apart from the fact that the said speeches were vehement and forceful, the speakers had tried to put a particular point of view before the audience. With respect to Bal Thackeray's said speech, he opined that it was "certainly inflammatory", but if it was read as a whole, it would be covered by the Explanation to Section 153A I.P.C. so far as the question of promoting enmity between the classes was concerned and might, therefore, not amount to an offence under section 153A. In view of this opinion, none of the speakers who addressed the said meeting was at any time prosecuted. As already pointed out earlier, the Explanation under section 153A was deleted when that section was amended by Act XLI of 1961.

85.12 The speeches made by Datta Salvi, Manohar Joshi and Bal

Thackeray at the said public meeting held on September 8, 1968, the speeches made by Datta Salvi and Bal Thackeray at the said public meeting held on September 29, 1968 and the speeches made by Datta Salvi, Manohar Joshi and Bal Thackeray at the said public meeting held on October 12, 1969 satisfy the test laid down in paragraph 6.8 of Chapter 6 of this Report and were, therefore, communal speeches.

The Chowpatty speech

85.13 The disputed structure for the first time dramatically burst into the limelight on the communal stage when the Shiv Sena Chief, Bal Thackeray, made a speech at a public meeting held in Bombay at the Chowpatty sands on November 2, 1969. The meeting received advance publicity in the Marathi daily the 'Navakal'. In the 30th October 1969 issue of the 'Navakal' was published a news item headed "Shiv Sena Chief Shri Balasaheb Thackeray's Bomb-Shell. Exposure of Dreadful Letter in Chowpatty Meeting" [Ex. JU(M) 6]. The said news item stated :—

"In the meeting to be held at Chowpatti on Sunday evening the Shiv Sena Chief Shri Balasaheb Thackeray is going to throw a bomb-shell which is bound to shock the entire public.

"This bomb-shell is a letter. This letter sent to an officer-bearer of the Jamiat-e-Ulema in Bombay has come to the hands of Shri Thackeray. It contains a terrible plot to make severe attacks on the Hindus by rushing into the agitators when the Shiv Sena starts an agitation over the boundary issue in Bombay.

"It contains the following queries : "Did you get the 'material' sent for bringing the plot into effect? Why is there no acknowledgement so far?" and again and again eagerly requests to send an 'immediate reply'. Shri Thackeray himself is going to expose at Chowpatti what this material is.

"The letter suggests that this letter and this plot should be kept a top secret and that the plot should be executed skilfully and it goes on to say, 'Although our bombs were wasted in Ahmedabad and at other places, you should not get disheartened and you should raise a tumult in Bombay and for that purpose you should remain underground right from now.'

"This letter, which begins with a 'Mehrap' (canopy) containing the words 'Pakistan Zindabad' was sent to Bombay from Ahmedabad, but some alert citizen straight sent it to the Shiv Sena Chief.

85.14 On reading the said news item, Gulzar Ahmed Azmi [J.U. (M.)W. 2], the Secretary of the Jamiet-ul-Ulema, Maharashtra, sent a letter to the 'Navakal' which was published as a news item in the 31st October 1969 issue of the said daily [Ex. JU(M) 7]. The said letter stated :—

"We have read today in your newspaper a news-item stating that a letter sent to the office-bearers of the Jamiet has come to the hands of the Shiv Sena Chief Balasaheb and that he is going to expose

it in the meeting on Sunday. In our opinion, there is no substance in this news.

“Our Jamiet-E-Ulema has nothing to do with any such activities whatsoever. On the contrary, right from the pre-Independence period, we have all along been fighting against such tendencies and programmes. We shall continue to fight against them even hereafter.”

85.15 There is a certain amount of mystery surrounding the said letter alleged to have been sent from Ahmedabad to an office-bearers of the Jamiet-ul-Ulema. Apart from an impassioned outburst against it and the Muslims by Bal Thackeray at the Chowpatty meeting, nothing further was heard about this letter. It does not appear to have been handed over to the Police, nor are we informed how “some alert citizen” had managed to get the said letter and why he should have handed it over to Bal Thackeray instead of to the Police. The news-item about the letter obviously prepared the public to expect some sensational disclosures at the Chowpatty meeting and provided very effective advance publicity for that meeting.

85.16 The said Shiv Sena meeting was held at Chowpatty on November 2, 1969 at about 6-30 p.m. and about 60,000 persons are estimated to have attended the said meeting. The speech made by Bal Thackeray (Ex. G 257) was taken down by two shorthand writers from the Special Branch I, C.I.D., Bombay, namely, V. M. Mathkar and S. V. Karekar.

85.17 In the course of his speech Bal Thackeray referred to a number of topics. He began his speech by mentioning that the said meeting had a significance of its own and that for the said reason a huge audience had gathered. He then said :—

“I have come with a lot of subjects. Some say a bomb-shell has been brought. How am I going to burst it? I am going to burst it, ripping everything to shreds.”

He then criticized in strong terms the Government, the Congress and the Prime Minister and the policies pursued by them, including the nationalization of banks and waxed indignant about what he called the persecution of the Shiv Sainiks during the Maharashtra-Mysore boundary agitation in Bombay launched by the Shiv Sena in February 1969. Continuing he said :—

“I am speaking as the Shiv Sena Chief and I am telling the journalists that our fathers have not taught us cowardice. Did I not visit the Durgadi Fort along with my wife while section 144 had been enforced there? On the other hand, look at the Jan Sanghites. When there is some disturbance on the road, they sit in the house and ask their wives to go and see what is taking place on the road. When section 144 was enforced I had said at the Shivaji Park that the Police have made nonsense of section 144; they enforce it anywhere at any time to save their own skins. Section 144 is enforced and the S.R.P. men are posted in addition. Then our Shiv Sainiks are ready. I tell you why I violated section 144 there. I did not

want to go to Kalyan. When a ban was imposed on worship, the Hindu in me woke up. I said to myself, 'It won't do, I must go immediately'. In the afternoon someone was telling me, 'Balasaheb, there is a historical temple at Mahad. A coconut is broken and offered to the Goddess there. It is a good old tradition but this year the Muslims have opposed it. It is said that they will not allow the breaking of a coconut.' I care a hang. I am going to visit Mahad personally and I will break a coconut there myself. Those who obstruct will suffer. I tell this to the Government, 'How long are we to tolerate this?'

He then referred to the Maharashtra-Mysore boundary dispute and continued his criticism of the Congress and the Prime Minister. He said :—

"I tell you, O Lady, step aside and entrust the country to me for ten days. I will first bury the 'green' calamity in a ditch. The green calamity looming large over the country and that Fakarya are to be brought to their knees. Later we shall see what other troubles are there."

He then came to the subject of the said "bomb-shell" and said :—

"Importance was given to this subject in newspapers recently. Some 'greenish' people and some venomous people had hatched a big plot to bring about communal riots in Bombay on the 4th, had our proposed agitation been launched on the 2nd November. I want to tell those fools that they are playing with fire. Now those old days are gone. Mahatma Gandhi is now no more. Now nobody will show you favour. If you do anything against Maharashtra or start anything in Maharashtra, Shivraya's Marathas will not fail to crush you. They should bear this in mind. I am not speaking in a fit of emotion. I am speaking out of pain. The country was divided into two and if they are not satisfied with this, then I say that such things will not be tolerated any longer. We should tell them this much. The Muslim brethren should be asked to save their youths. We do not care for the influence of the people cherishing outdated ideas, the Lakirs and Fakirs. Those Lakirs and Fakirs are no more required. Because Hamid Dalwai is doing some work, they call him a Fakir and Kafir. They call him, who wants to create goodwill in the country, a Kafir. Ghaffar Khan has arrived here. Why so much preparation in this connection? We asked the Police privately what we should do. This is a country of the impotent. There is no indignation, no resentment, no respect, nothing at all. Humiliations have been showered on a large scale in the past. But they are not ashamed to narrate them. They are prepared to suffer more humiliations. Rulers should be such as can slap back as soon as there is an insult. There should be such rulers as can declare that this is not a country of impotents but of Hindus. . . . We may not agree with Mahatma Gandhi's policy. But he put up leaders and created his retinue which proved useful until recently. But the unpardonable mistake committed by Mahatma Gandhi in respect of Pakistan cannot be undone.

Himalayan blunders But at whose cost ? What happened ? First mortgage the country and then say Himalayan blunder is committed. At that time much brave talk was indulged in, 'Sword will meet sword', but instead they embraced each other. Then he said, 'Janab Jinnahsaheb take this'. This is what happened. If this venom is still there in our country, then it is the misfortune of the country. What happened at Ahmedabad ? Who are they ? What politics are these ? The President's medal must be awarded to Inspector Vaswani. This Vaswani faced two or three 'goondas'—notorious 'goondas' in Ahmedabad who used to give much harassment and shot them dead. The Muslims raised a hue and cry. They made applications. Then our Hitendra Desai Government transferred Vaswani. (Cries of 'shame', 'shame'). What shame ? Shame ! Should we rather not say, 'No shame; no shame'. Attempts are being made to reinstate Shaikh who kicked the Ramayana and who was suspended. What is this ? The leaders should even now tell where the trouble starts. I offer them an opportunity, present your case. Whatever agitations—be they social, political or economic—have taken place in the country within the span of last 22 years, how many had participated sincerely in such agitations ? You take out a 'Morcha' for Al-Aqsa. How many Muslims had participated at the time of Samyukta Maharashtra ? A few nationalist Muslims might have participated in the agitation. This is our grievance. Whenever I advocate the cause of the Marathi people, I am branded as provincial and parochial."

He then again dealt with Maharashtra-Mysore boundary dispute and then came to the topic of national integration. He said :—

"When something is talked about the Muslims, Thackeray is blamed. When Madhok speaks something, he is made the target. Leave aside my case. If these people listen to what Ghaffar Khan, who is touring this country at present, is saying in this country, a greater danger will be obviated, a great unity will be noticed. Differences are now widening between the two Gandhis. At present Smt. Indira Gandhi is ruling the roost. Mahatma Gandhi is nowhere before her. Ghaffar Khan says, 'Behave affectionately.' He advises the Muslims to behave in accordance with the teachings of the Koran. But what is the situation prevailing today ? The same Ghaffar Khan needs to be given police protection, otherwise he will be done away with by the Muslims at any time. He says so for your welfare, for your good. Call this country as your own. There is national feeling behind this. He says this sincerely. Despite this, Ghaffar Khan requires police protection. If this be the attitude of the Muslims, we will have to think in a different way, I tell you plainly—if you want to beg for votes, you may do so, but we will have to think in a different way as self-respecting staunch Hindus. We will not think about begging votes. The rulers are constrained to do so. The Ahmedabad riots have made this clear. This insignificant fellow Hafizka—his mouth smells of the illicit distilling of the Muslim league. What does he say ? Non-Marathi speaking people

should be recruited in the Police Department. What does he mean by non-Marathi speaking people? He means the Muslims should be recruited. Do recruit them. We will not put up with the recruitment of the Muslims. If those Muslims are Indians, then recruit them as Indians. They should not be recruited as Muslims. If such recruitment is made in the future, we will have to oppose any such move vehemently. We do not want anybody as Muslims. Live here as Indians. Time has come to explain this in a forthright manner. As what are you staying in this country? Live here as Indians. Be Muslims by birth, but if you want to live, live as Indians.... Similarly, I tell you the words 'Bharat Mata Ki Jai' will never come out from your lips".

He then read out in English the contents of a writing, which, according to him, was the said letter referred to in the 30th October 1969 issue of the Marathi daily the 'Navakal'. He said :—

"Be aware of what is happening. Communal riots are to be fomented in the country. If this move materializes, our troops naturally will be engaged here in this country. Our troops are stationed in Ahmedabad. Now look beyond. They have already chalked out their plans. Their move is to bring about riots and compel all troops concentrated on the borders to preoccupy themselves with the riot-ridden parts of the country and then they are free to grab all the borders."

After referring to various other topics, before concluding he said :—

"I have to tell the Muslims, come as brothers, if not, go out of India. Do not remain here even for a moment. Who wants the votes of the Muslim League? The Muslim League brought about the Partition of India. We do not want their votes. We will not secure power by making an alliance with traitors."

Concluding his speech he asked the audience to co-operate with the Police, and not to shout slogans while going to their homes, but to shout them only at the place of the said meeting.

85.18 No action was taken against Bal Thackeray in respect of the said speech (G.W. 2/109/209).

85.19 The said speech of Bal Thackeray satisfies the test laid down in paragraph 6.8 of Chapter of this Report and was, therefore, a communal speech.

Report of Bal Thackeray's speech in the 'Inquilab'

85.20 A report of the said speech made by Bal Thackeray was published in the 3rd November 1969 issue of the Urdu daily the 'Inquilab' which had a circulation in Mahad [P.W. 102/1(2)/3359 (1)]. It was published on the front page as appears from the report dated November 18, 1969 from the S.P., Kolaba, to the D.I.G.(Int.) (Ex. P 1065). The said news report stated as follows :—

"Muslims Will Have to Live By Behaving As Indians."

"Bombay : 2nd November : (Staff Reporter). While addressing a public meeting held this evening at Chowpatty Bal Thackeray,

the founder of the Shiv Sena, said 'If the Muslims want to live in India, they will have to live by behaving as Indians. The country has been divided into two parts. Now they will not get anything. This country belongs to the Hindus and as a staunch Hindu I say that they cannot live separate from us. They did not join us in the Border Struggle started by us. But they all joined together on the question of Al Aksa. The same is the case with the Punjabis. Ten thousand Punjabis staged a demonstration on the Chandigarh issue. But not even a single Punjabi from Bombay has joined us.

"Bal Thackeray went on to say, 'If I get the reins of the Government for ten days, I will first remove the green colour from the country and will remove Fakruddin Ali Ahmed. If I narrate here the facts relating to Ahmedabad, the situation here will become worse. Therefore, I do not want to narrate them here. Indira Gandhi has taken the support of Fakruddin, Menon and Dange. If the Prime Minister runs the Government under the guidance of the 'Lalbhai's' (i.e. the communists) I will stage a demonstration with black flags. I have not withdrawn the border struggle launched by me. But, in view of the situation at Delhi and on the assurance given by the Prime Minister I have postponed it for some days. The reason is that the country comes first.' He added, 'Bank Nationalisation is a 'bogus' thing'.

"Addressing the Muslims he said, 'You should at least act on the advice given by Gaffarkhan. If you continue to behave in this very manner, we will have to think about you'. He said, 'Hafizka's lips still emit the smell of the Muslim League. He wants to get the Muslims recruited in the police force. If that happens, we will oppose it'.

"He took out a letter from his pocket, and reading it out he said, 'This has been written to Jamiet-ul-Ulema (wherein it is written) 'the activities of Bal Thackeray are on the increase and Pakistan Zindabad; Please intimate to us as to whether 25 rifles, 10 guns, 5 bombs and 2 revolvers have been received or not'".

"Then he went on to say, 'Hindus are prohibited from breaking coconuts before the 'Devi' at Mahad merely because the Muslims from that place do not want that. For the sake of votes, the Government may embrace the Muslims. But after returning from Delhi I will go to Mahad and break a coconut personally. If anyone comes in my way, I will break his head. If Madhok or Bal Thackeray says something about the Muslims, the Government prosecutes him. But these green people have full freedom. I want to put an end to that'.

"Lastly he repeatedly appealed to the people that they should not discuss on the road what was stated here at the Maidan, that they should go away quietly, that they should not make any sort of comments and that they should co-operate with the Police.

"News about stray incidents at several places while the Shiv Sena procession was returning has been received. A tea stall at Kurla

Railway Station was stoned. A clock at the place was broken.”

85.21 Dr. Mrs. Qamar Kazi has stated [M.M.W. 1/1(7)/3317 (3)]:—

“The report of this speech of Mr. Thackeray was published in the Urdu Paper ‘Inquilab’ of 3rd November 1969 but the Marathi Press safely, conveniently and purposely avoided the same.”

Though this part of Dr. Mrs. Kazi’s evidence was not challenged and though no Marathi daily carrying a report of the said speech was produced before me to contradict her, I do not find it possible to believe that the Marathi Press blacked out this speech. Probably the above-quoted statement of Mrs. Kazi refers only to the anti-Muslim portions of the speech and not to the entire speech.

85.22 The said news report in the ‘Inquilab’ highlighted the anti-Muslim portions of the said speech. The Muslims of Mahad would not in the normal course be present at the said meeting, but they would learn what had transpired at the said meeting from reading the newspapers. The said news report in the ‘Inquilab’ would have obviously filled them with apprehension and fear.

The formation of the Mahad Branch of the Shiv Sena

85.23 There was no branch of the Shiv Sena in Mahad, nor did the Shiv Sena have any particular footing or hold in Mahad prior to the Chowpatty speech of Bal Thackeray. In the wake of the enthusiasm which swept over the Hindus of Mahad as a result of the said speech made by Bal Thackeray on November 2, 1969, a branch of the Shiv Sena was formed in Mahad. The formation of the said Branch was announced at the public meeting held on December 11, 1969 at Mahad. Anant Mahadeo Shah of the P.S.P. presided at the said meeting. Mahadeo Bhide, the Shakhapramukh of the Panvel Branch of the Shiv Sena which had been opened about two years prior to the disturbances and was the first branch of the Shiv Sena in the Kolaba District, had specially come to Mahad for the said meeting of December 11, 1969 and was the main speaker (P.W. 97/14/3232). By his report dated December 19, 1969 (Ex. P 1068) the S.P., Kolaba, informed the D.M. about the said meeting. Copies of the said report were sent by the S.P. to the D.I.G. (Int.) and the D.I.G. (B.R.).

85.24 About one hundred persons attended the said meeting. In the course of his speech Mahadeo Bhide said that the Shiv Sena had been started in the name of Lord Shiva after seeing that the brave Marathas of Chhatrapati Shivaji, the saviour of the Hindu religion, had become helpless. He announced that the Shiv Sena was being organized in Mahad. He said :—

“Up till now not a single party had cared for the Hindu religion.

Though the Mahikavati temple of the Hindus was demolished and the Goddess disappeared, no one had cared for its reconstruction. On the contrary it is strange that the Muslims are claiming it as a mosque. What is this going on? You must stand united and construct the temple and instal the Goddess in it. Shri Bal Thackeray

is coming for this purpose and we should render help to him." He then announced that Bal Thackeray would pay a flying visit to Mahad on December 22, 1969 on his way to Sawantwadi and he would be again in Mahad on December 28, 1969 for the re-installation of the Goddess.

The composition of the Mahad Branch of the Shiv Sena

85.25 According to S. B. Savant [C.W. 29/1(13)/3252(12)], Ebrahim Chichkar [C.W. 30/1(5)/3270(3)] and Abdul Kadir Kablay [M.M.W. 3/1(7)/3385(3)], the Mahad Branch of the Shiv Sena was composed of the younger elements of the Jan Sangh and the P.S.P. workers in Mahad. What these witnesses have stated is borne out by the fact that the person who presided at the said inaugural meeting of the Mahad Branch of the Shiv Sena on December 11, 1969 was a P.S.P. worker; Anant Mahadeo Shah, Madhukar Sitaram Pawar (deponent of affidavit No. 393), who became the Mahad Shahar Shakhapramukh, was formerly a P.S.P. worker and Dagdu Babu Parte (the deponent of affidavit No. 392), who became the Mahad Taluka Shakhapramukh, belonged to the Jan Sangh and had contested the 1967 Legislative Assembly elections on the Jan Sangh ticket [C.W. 30/1(21)/3270(11-12)]. It is clear that the communal challenge thrown by Bal Thackeray on November 2, 1969 struck a responsive chord amongst these diverse elements and brought them together in a common communal fold, namely, the Mahad Branch of the Shiv Sena.

The programme of the Mahad Branch of the Shiv Sena

85.26 The programme of the Mahad Branch of the Shiv Sena was frankly and avowedly communal. Mahadeo Bhide, the Shakhapramukh of the Panvel Branch of the Shiv Sena, who announced the formation of the Mahad Branch at the said public meeting held on December 11, 1969, openly declared that the Shiv Sena was the champion of the Hindu religion. Its policy as declared by him, and as pursued by the Mahad Branch, was to construct a temple on the disputed property and to install in it the idol of Goddess Mahikavati (Ex. P 1068). This communal programme of converting the disputed structure (claimed by the Muslims as a mosque) into a Hindu temple evoked an instant sympathy in a number of Hindus and aroused all their latent communal feelings, so that in a short while even veteran public leaders of Mahad, such as Dr. Baburao Mehta, the President of the Mahad Town Congress Committee, and the P.S.P. leader, S. G. Tipnis, came under its hypnotic communal spell. Dr. Mehta became an ardent supporter and a patron of the Shiv Sena and the President of the Temple Committee set up to construct a temple on the disputed property and S. G. Tipnis blessed this project in a public speech at the meeting held in Vireshwar Temple on January 23, 1970 and also presided on May 7, 1970 at the public meeting held by the Mahad Branch of the Shiv Sena to celebrate the Shiv Jayanti.

The Ambedkar College incident

85.27 In the night of December 11, 1969, an incident took place in which some Hindu students and some Muslim students studying in Dr. B. R. Ambedkar College were involved. The witnesses who have deposed about this incident are Dy.S.P. (Int.), Patankar [G.W. 11/1 (8)/3398(3-4)] and Surba Tipnis [C.W. 47/1(29) (b)/3965(19)]. A detailed narration of the facts of this incident are also set out in the report (Ex. G 334) made by P.S.I., M. B. Vichare to the S.P., Kolaba, with copies to the S.D.P.O., Mahad, and the Circle Police-Inspector, Mahad. The evidence of Dy. S.P., Patankar is based upon this report.

85.28 The facts as appearing from P.S.I., Vichare's report (Ex. G 334) are that a group of Hindu boys and girls studying in the said college and a group of Muslim students of the said college were returning home after the night show. The Hindu girls were staying in the college hostel. The Muslim students were residents of Rajewadi Village, which lies to the east of Mahad. When both these groups came on the Bombay-Goa Road, the Muslim boys started teasing the Hindu girls. An altercation took place and one of the Muslim students took out a knife. A Hindu student caught hold of his wrist and snatched away the knife but in the process he cut his finger. On hearing the noise of the scuffle, other boys from the hostel came out and the Muslim boys ran away. The next morning, that is, on the morning of December 12, 1969, at about 8 a.m., the Panchas of the Muslim Jamaat of Rajewadi Village and Chandrakant Khanderao Deshmukh, the Secretary of the District Congress Committee, Anna Pawar and some other Hindus from Mahad and the college students, all gathered at Shedav Naka, the easternmost point of Mahad. The Principal of the College, V. V. Mali, requested everybody not to commit a breach of the peace and with a view to settle the matter mutually it was decided to hold a meeting that night in the office of the Rajewadi Gram-panchayat. At that meeting the Panchas of the Rajewadi Muslim Jamaat decided that the Muslim students responsible for the incident should be punished, and by way of punishment their heads should be shaved clean and each of them should pay a fine Rs. 25. The Jamaat further passed a resolution that if any Muslim from Rajewadi Village went to see a film show at Mahad during the succeeding six months, he would be fined a sum of Rs. 51. The Police recorded the statement of the student whose finger had got hurt in the said incident. This student, Dilip Mukadam, stated that no girls had accompanied him, nor did he mention about any Muslim student taking out a knife and he further stated that the matter would be compromised mutually. When the news of this incident spread in Mahad, Surba Tipnis, who is described in the said report as being at the time the Secretary of "the Republican Society" which was conducting the said college, came to learn about it. He thereupon asked Principal Mali why he had not been informed immediately about it even though he was the Secretary of the Society and that he knew why the Congressmen were settling the matter and he threatened the college students that if they did not

tell the true facts, they would be removed from the College. Some of the students thereupon approached S. B. Savant who guaranteed them that he would see that no harm came to them. Tipnis further threatened Chandrakant Deshmukh and Ibrahim Kabli, the Sarpanch of Rajewadi.

85.29 In his evidence, Tipnis has rightly pointed out that the said college was not run by "the Republican Society" but was being conducted by the People's Education Society. He has further stated that he was not the Secretary of the said society but was a member of the Governing Body thereof. He has, however, admitted that on learning about the said incident, he went and saw the Principal to find out what had happened.

85.30 The said incident is also referred to in the representation dated December 19, 1967 from twenty-three Muslims of Mahad to the Chief Minister (Ex. P 1066). In the said representation it is alleged that Tipnis felt sorry that an opportunity to create trouble between the Hindus and the Muslims had been lost and that he had gone to Shedav Naka, abused the Muslims who were there and threatened the Hindu students with rustication.

85.31 It is not necessary for the purpose of this Inquiry to decide between these rival versions. The incident on the Bombay-Goa Road did not take place as a result of any communal enmity between Hindus and Muslims, nor was it an offshoot of the Shiv Sena meeting held that evening. This arose as a result of the teasing of some girl students by some male students. The fact that the said incident happened the very night after the Shiv Sena meeting was a coincidence and the said meeting and this incident did not have any connection with each other. The said incident could well have become a communal matter, and in the atmosphere generated in Mahad by the Chowpatty speech of Bal Thackeray, a serious communal matter, but the Panchas of the Muslim Jamaat of Rajewadi Village showed considerable tact and promptness in seeing that the local leaders did not turn this incident into a communal issue. It is, however, quite possible that some members of the opposition party did not much relish the conciliatory role played by the Secretary of the District Congress Committee and the other Congress workers nor the credit that they would get therefrom for preventing the incident from turning into a communal matter.

The announcements of Bal Thackeray's visits

85.32 From time to time announcements were made of the dates of the intended visit of Bal Thackeray to Mahad. At the said Shiv Sena meeting held on December 11, 1969 it was announced that he would pay a flying visit to Mahad on December 22, 1969 on his way to Sawantwadi and that he would be in Mahad again on December 28, 1969 for the reinstallation of the idol of the Goddess. In the 12th December 1969 issue of the Marathi daily the 'Navakal' a news item appeared that he would address a public meeting at Mahad on the 27th or the 28th of December 1969. In the article headed "The Mahikavati Temple at Mahad" by Nivas Pore published in the 28th

December 1969 issue of the 'Navakal' (Ex. P 1067) it was mentioned that Bal Thackeray was commencing his Konkan tour and that the first meeting of the tour was arranged at Mahad that very day, that is, on December 28, 1970 [P.W. 97/1(7)/3212(3)], [P.W. 98/1(8)/3243(20)], M.M.W. 3/1(7)/3385(3)]. It appears from the report dated November 29, 1969 from the D.I.G. (Int.) to the Home Secretary that Bal Thackeray intended to tour Konkan. He probably wanted to synchronize his visit to Mahad with his Konkan tour. He, however, did not visit Mahad on any of these days.

85.33 In expectation of Bal Thackeray's visit, posters and flags were put up in Mahad in December 1969 to welcome him, though according to S.P., Khan no anti-Muslim posters were put up at any time (P.W. 101/17/3353; P.W. 97/10/3229). Thereafter in the 'Navakal' and in the 12th January issue of the Shiv Sena weekly the "Shiv Garjana", published from Thana and then edited by V. N. Marathe, the news appeared that Bal Thackeray would visit Mahad on January 17, 1970 [M.M.W. 1/1(11)/3317(5), C.W. 31/1(4)/3276(21)]. The C.K.P. (Chandraseniya Kayastha Prabhu) community, to which Bal Thackeray as also Surba Tipnis (C.W. 47) belonged, was to hold a conference at Mahad on January 17 and 18, 1970 and as appears from several Intelligence reports (Exs. G 214, G 216, G 217 and G 218) Bal Thackeray was going to attend the said conference. This conference was the first conference of the C.K.P. community to be held in Mahad [C.W. 29/1(13)/3252(12)]. Bal Thackeray finally visited Mahad on January 17, 1970, went up the disputed structure and broke a coconut there. At that time 'gulal' was sprinkled on the Muslim tombs outside the disputed structure and a flag was hoisted on one of the dilapidated walls of the said structure.

Article on "The Mahikavati Temple"

85.34 To synchronize with Bal Thackeray's proposed visit to Mahad on December 28, 1969, in that day's issue of the 'Navakal' an article was published entitled "The Mahikavati Temple at Mahad" written by Nivas Pore (Ex. P 1067). The said article has already been referred to in Chapter 83. It mentioned the reference made to the disputed property by Bal Thackeray in his Chowpatty speech. It also stated that Bal Thackeray was that day starting his Konkan tour and that the first meeting of that tour would be held in Mahad on that day. The said article then purported to set out the history of the disputed structure.

The representations by the Muslims

85.35 In view of the agitation in respect of the disputed structure, several Muslims approached the authorities. Gulzar Ahmed Azmi [J.U. (M.)W. 2], Secretary, the Jamiet-ul-Ulema, Maharashtra, sent a telegram to the Chief Minister and the I.G.P. on December 17, 1969 drawing their attention to this agitation [Ex. J.U.(M.) 8]. By his reply dated January 19, 1970 the Under-Secretary to the Government of

Maharashtra, Home Department, informed Gulzar Ahmed Azmi that necessary precautionary measures were being taken by the Police in the matter [Ex. J.U. (M.) 9].

85.36 Twenty-three Muslims from Mahad sent a representation dated December 19, 1969 (Ex. P 1066) to the Chief Minister with copies thereof to Mr. A. R. Antulay, the then Minister of State for Education, Law and Judiciary, the D.M., Kolaba, the S.P., Kolaba, the Dy. S.P., Mahad, and the P.S.I., Mahad. The said representation referred to Bal Thackeray's announcement that he would break a coconut at the disputed structure and to his proposed visit to Mahad on December 28, 1969. Allegations were also made in the said representation against Surba Tipnis (C.W. 47). It was alleged therein that Tipnis intended to go to the disputed structure on December 22, 1969 and break a coconut. From the said representation it appears that posters were put up at various places in Mahad with the legend "Bal Thackeray leaps on the mosque", an allusion to the tiger—the symbol of the Shiv Sena—leaping on a mosque. The Ambedkar College incident was also referred to in the said representation as also the threats alleged to be given by Tipnis to the Muslims near Shedav Naka. The said representation concluded with a request to take the maximum precautionary measures. The D.M., Kolaba, who had received a copy of the said representation asked the S.P. for his remarks. S.P., Khan sent a copy of the said representation to Circle Inspector Salunke who made his report dated February 8, 1970 thereon (Ex. P 1191). The said report stated that the poster referred to in the said representation had been put up at only one place.

85.37 On January 9, 1970 Dr. Mrs. Kazi rang up S.P., Khan at Alibag between 9 a.m. and 10 a.m. and informed him that she wanted to see him. He asked her to do so any time in the course of the week. On January 13, 1970 Dr. Mrs. Kazi, accompanied by her neighbour Babu Mopla, called on S.P., Khan at Alibag. There was a two fold reason for her visit. The first was to make a complaint about P.S.I., Vichare's behaviour and the second was to hand over a copy of the said representation to him. According to her, on the night of December 21, 1969 between 10-30 p.m. and 11-30 p.m. Shiv Sena flags were hoisted on electric poles from the S. T. Stand to Salwad Naka by a group of young boys dressed in Bhagwa coloured clothes who went around on bicycles in groups of 15 to 20. At about 11-45 p.m. some Muslims informed her about the hoisting of the flags and further told her that these boys had gathered at Salwad Naka (from which point the Muslim locality starts) and were giving abusive slogans. She thereupon rang up Dy. S.P., Khan, S.D.P.O., Mahad, for, she has alleged, "it has been my experience that it is fruitless to ring up the Mahad Police-Station." The S.D.P.O. was, however, out of station, and she, therefore, had to ring up the Mahad Town Police-Station and give the information to P.S.I., Vichare. Vichare, however, replied to her rudely, saying, "It is always the Muslims first who get panicky over trifling matters and over nothing even and put the blame on others."

She did not answer him back but put down the phone. She complained against Vichare to the S.D.P.O., Mahad, personally on December 28, 1970 as also to S.P., Khan, on the telephone on January 9, 1970 [M.M.W. 1/1(12)/3317(5), 3/3318-9]. Vichare has, however, denied that she had at any time rung him up (P.W. 101/3/3338). The evidence of S.P., Khan, however, shows that when she saw him on January 13, 1970, she had complained to him about Vichare being very rude and offensive to her when she had rung him up on a couple of occasions and that he had thereafter spoken to Vichare about it and warned him that if there were any more such complaints against him, he would have to take disciplinary action (P.W. 97/74/3435). Khan did not remember whether Mrs. Kazi had rung him up on January 9, 1970 because as he said, "She used to ring me up very often over the slightest incident and it is therefore difficult to remember any particular call of hers" (P.W. 97/11/3229). Vichare as a witness has not impressed me. His demeanour has been very unsatisfactory. In view of S.P., Khan's evidence that Dr. Mrs. Kazi had complained to him and that she was in the habit of ringing up Khan very often over the most trifling incident, I do not accept Vichare's evidence that she had not rung him up even once. It is inconceivable that she, who would ring up the S.P. at Alibag over trifling matters, should not ring up the Sub-Inspector in charge of the Mahad Town Police Station whenever an occasion arose. That flags and posters were put up at Mahad in December 1969 to welcome Bal Thackeray is admitted by P.S.I., Vichare himself (P.W. 101/17/3353) and Savant has deposed about the abusive slogans [P.W. 101/17/3353; C.W. 29/1(13)/3252(12)].

85.38 When she met S.P., Khan on January 13, 1970 Dr. Mrs. Kazi also had a talk with him about Bal Thackeray's visit to Mahad on January 17, 1970. There is a controversy between Dr. Mrs. Kazi and S.P., Khan about this talk. According to her, she inquired from him what steps he was going to take if Bal Thackeray visited Mahad on January 17, 1970, and the S.P. told her that he had received reports that though Bal Thackeray was going to visit Mahad on January 17, 1970, his purpose was not to visit the disputed property, whereupon she told him that the only purpose of Bal Thackeray's visit could be to break a coconut at the disputed structure; Khan then told her that he was proceeding on leave for one month from January 14, 1970, but at her request he agreed to postpone his going on leave till the evening of January 17, 1970 and further assured her that complete bandobust would be maintained by the Police and in case Bal Thackeray attempted to go up to the disputed structure he would be prevented from doing so (M.M.W. 1/3/3319). Khan has denied that he had assured her that Bal Thackeray would not be allowed to enter the disputed property. According to him, the assurance which he gave was that all steps would be taken to see that there was no breach of the peace (P.W. 97/39/3302). It is somewhat difficult to believe that when the situation was so delicate, a Superintendent of Police would so unequivocally commit himself about what he intended to do. S.P.,

Khan must have given Dr. Mrs. Kazi and Babu Mopla the assurance to which he has deposed. It is likely that Dr. Mrs. Kazi must have understood it to mean that there would be no breach of the peace as Bal Thackeray would not be allowed to enter the disputed structure.

85.39 The telegram sent by the Secretary of the Jamiet-ul-Ulema, Maharashtra, the representation made by the twenty-three Muslims and the visit of Dr. Mrs. Kazi and Babu Mopla to the S.P. show that the Muslims of Mahad were greatly agitated at the prospect of Bal Thackeray's visit to Mahad and his making good his intention declared in his said speech of November 2, 1969 and that they apprehended trouble.

The reaction to Bal Thackeray's Chowpatty speech and his proposed visit to Mahad

85.40 Several witnesses have deposed about the reaction in Mahad to the said speech of Bal Thackeray made on November 2, 1969 and the announcements from time to time of his forthcoming visit to Mahad.

85.41 S. B. Savant has described the reaction in Mahad in these words [C.W. 29/3252/1(13)/3252(11-12)] :—

“Early in 1969 Shri Bal Thakare, the Chief of the Shiv Sena, made a triumphant entry in the Durgadi temple of Kalyan and won the applause of the entire conservative section of Hindus. While speaking in a public meeting in Bombay in about October 1969 about this exploit this flamboyant leader of Shiv Sena made a reference to the Mahikavati temple saying that its case was similar to that of Durgadi and that he would soon plant the Shiv-Sena flag on the dilapidated walls of Mahikavati in Mahad. This caused a tremendous commotion in Mahad. Several were the persons who looked upon him in wonderment as a dauntless saviour of Hinduism who had the guts to wipe out an age-old disgrace upon the Hindu Community. This feeling cut across party barriers and swept almost the entire Hindu community of Mahad in an unprecedented wave of emotionalism. Old animosity between the Hindus and Muslims was raked up almost over-night and a small group of Shiv-Sainiks was formed in Mahad drafted mainly from the P.S.P. and the Jansangh workers. Twice the date of Mr. Thakare's entry into Mahad was postponed and ultimately it was fixed in such a way as to coincide with the C.K.P. Conference which was for the first time in the history of the C.K.P. Community being held in Mahad on 17th January 1970. The C.K.P.'s from all over India had gathered at Mahad. It is believed that nearly a thousand people from this very small but highly vociferous community known for being socially conscious had gathered in Mahad. Shri Thackeray being a C.K.P. naturally has a tremendous hold upon this community—particularly upon those living in Bombay and Konkan. All sort of fantastic rumours regarding the political strength and the gangster tactics of Shri Thackeray were spread in the town which were accentuated by the highly provocative slogans like “Salam Alekum Maro Landekum” chanted by the newly baptised Shiv-

Sainiks. This created a panic amongst Muslims and several of them living in Hindu localities left the town.”

85.42 Dr. Baburao Mehta, who, as will be pointed out later, after Bal Thackeray's visit to Mahad on January 17, 1970, took a leading part in the agitation for constructing a temple on the disputed property, has deposed (C.W. 46/3-4/3953-5) :—

“The important issue in Mahad in 1970 was that of Mahikavati. . . This speech created a sensation in Mahad amongst both Hindus and Muslims. . . At that time the Muslims were very frightened and panicky and they had sent their womenfolk to the villages, though the Hindus had done nothing to give them cause for this. I considered this as an insult to the Hindus.”

85.43 Ebrahim Chichkar has deposed [C.W. 30/1(5)/3270 (2-3)] :—

“At the instigation of some persons from Mahad, probably Mr. Baburao Mehta and Shri Surba Tipnis, Shri Bal Thakare, the Chief of the Shiv Sena, declared in Bombay on 2nd November 1969 at Chowpatty that just as he had reclaimed the Durgadi Temple at Kalyan for Hindus, so he would reclaim the Mahikavati Temple at Mahad for Hindus, that he would break a coconut there and if anybody came to oppose him, he would break that coconut on his head. This declaration created a tremendous stir both amongst the Hindus and Muslims at Mahad. Having heard the stories of atrocities of the Shiv Sena in Bombay, the Muslims got scared and the Hindus began to think that they got a tough champion in Shri Thakare and therefore they decided to rally round him. The younger element from the P.S.P. and the Jan Sangh formed themselves into a party of Shiv Sainiks within a few days.”

85.44 Dr. Mrs. Qamar Kazi has described the reaction in Mahad as follows [M.M.W. 1/1(8-9)/3317 (3-4), 6-7/3322-3) :—

“I say that this particular part of the speech of Mr. Thakre created a feeling of communal disharmony amongst the people of Mahad and round about places leading to random discussions of the construction of Mahikavati Temple at the site of the said Jumma Masjid and the said Muslim Cemetery. I say that for the first time in Mahad the importance of Mahikavati Devi was being talked of in different circles, a thing, which was never heard of before. I say that some people also talked of collecting donations for the construction of such temple at the said place and such demands were made even from the well-to-do Muslims of Mahad. I say that this kind of discussion and the movement in favour of construction of a temple created a feeling of insecurity all over causing several Muslims and Hindus and business community to insure their properties, shops and godowns. I say that some of the Muslim families actually shifted to nearby places with their friends or relatives leaving their houses in Muslim Mohallas because of apprehensions of communal disturbances as Mr. Thakare was to visit Mahad to fulfil his challenges of 2nd November 1969 as stated above

“ About 60 to 70 per cent of the Muslim residents of my Mohalla left Mahad for this reason. A few other Muslims residing elsewhere in the town also left Mahad. I myself sent away my children and my aged uncle to Bombay. My neighbour Babu Mopla sent away his wife and children to Bombay. Dr. A. A. Deshmukh's wife left for Bhiwandi. Some of the Pallavakar families left for Village Jui in Mahad Taluka. The family of Deshmukh left for Village Lonasi in Mangaon Taluka. This Deshmukh is different from Dr. Deshmukh. One of the Pallavakars families left for Village Tempale in Mangaon Taluka. No one in particular left Mahad because of the coming Shiv Sena visit to Mahad on February 22, 1970. I have not thought it necessary to set out all the details in my affidavit. I was not worried about myself but about my children and my aged uncle. So I sent them away to Bombay but did not leave Mahad myself. I did not have any specific talk with Dr. Deshmukh or his wife or Babu Mopla or his family or the other families which left but Babu Mopla's family, when they left, came to see me. It is not true that none of the Muslims left Mahad as deposed to above.

“ Amongst the Muslims and the Hindus who got their properties insured as mentioned in paragraph 8 of my affidavit were Ibrahim Taj Mohamed who got insured his fish godown, Pansare who got his building insured and the Shahs who got insured their ration shop and general stores which are near my dispensary. . . ”

85.45 That a number of Muslims sent away their families to nearby villages by reason of Bal Thackeray's intended visit to Mahad also appears from the report dated February 23, 1970 (Ex. G 252) made by Inspector R. S. Salvi of the State Intelligence (P.W. 107) who was sent to Mahad on February 22, 1970 by the D.I.G. (Int.) to make a special report on the situation there.

85.46 V. R. Patankar, Dy.S.P. (Int.) (C.I.D.), [G.W. 11/5/3398(3)], has deposed that the report in the Urdu daily 'Inquilab' (Ex. P 1064), raised apprehension of trouble amongst the Muslims of Mahad who approached the D. M. to take precautionary measures to prevent any untoward incident.

85.47 The evidence of Surba Tipnis on this point is, to say the least, surprising. He has deposed (C.W. 47/7/3967-8) :—

“ I do not know what the reaction amongst the Muslims of Mahad was to this speech of Bal Thackeray, but the Hindus of Mahad remained as indifferent to it as they have been to all other questions.” His reply to the reaction to Bal Thackeray's visit to Mahad and his putting up a flag on the disputed structure equally strains one's credulity. He has deposed (C.W. 47/8/3968) :—

“ I do not know what was the effect on the Muslims of Bal Thackeray's planting the flag on the disputed structure, because as I was indifferent I had not made any inquiries with respect thereto.” It is not possible to believe that a veteran politician like Tipnis who had been in public life for a very long period and who had taken an active part in the civic and political life of Mahad should not be aware

of the reaction to Bal Thackeray's speech or to his visit and to his breaking the coconut and putting up the flag on the disputed structure. His subsequent answers throw considerable light on his attitude and furnishes a clue to the role he must have played. He has deposed (C.W. 47/23/3974) :—

“Bal Thackeray's act in planting the flag at the disputed site and breaking a coconut and sprinkling 'gula' there did not lead to tension between the two communities. The tension between the two communities began in Mahad only on the morning of May 8, 1970 when the two Muslim boys removed the flag from the disputed site. No controversy at all took place between Hindus and Muslims as a result of Bal Thackeray's planting the flag, breaking the coconut and sprinkling the 'gula' at the disputed site. No such controversy took place either in January or February 1970 or in any subsequent months. I now say that there was no tension or controversy but some negotiations were going on and some memoranda were being sent by the Muslims. The Muslims were trying not to hand over this land to the Municipal Council. There were no memoranda sent by the Hindus but only by the Muslims. I have not at any time approved of Bal Thackeray's action at the disputed site and thereby creating problems for nothing.”

85.48 If there were no controversy and no tension, one wonders when and how the question of “creating problems for nothing” came into being. The above quoted passages from his evidence tend to confirm the allegations made against him by the Muslims in their said representation dated December 19, 1969 to the Chief Minister. As will be pointed out later, the role played by Tipnis in the controversy relating to the disputed property and the communal situation in Mahad was an equivocal one. The portions of his evidence quoted above seek to make out as if the speech of Bal Thackeray and his visit to Mahad and all that took place at that time remained unnoticed by the people of Mahad and had no effect whatsoever. The evidence of the other witnesses referred to above, the police reports already referred to and which will be referred to later and the events which took place in Mahad after January 17, 1970 all contradict him, and I have no hesitation in rejecting his evidence that neither the speech of Bal Thackeray nor his visit to Mahad nor what he did there at that time created any tension or controversy in the town.

85.49 The evidence led before the Commission clearly establishes that the said speech made by Bal Thackeray on November 2, 1969 and the announcements from time to time of his visit to Mahad created a sensation amongst the people of Mahad. The Hindus were elated and began thinking of constructing a temple on the disputed property. The Shiv Sena, which till then had no foothold in Mahad, opened a branch there. Anti-Muslim posters began to appear and anti-Muslim slogans came to be shouted in the town. The “Mahikavati Temple” became the subject of a newspaper article. On the other hand, the Muslims were filled with fear and apprehension and appealed to the

Chief Minister and the authorities to take precautionary measures, for they were afraid that Bal Thackeray would repeat in Mahad what he did at the Durgadi Fort and that such an action on his part might lead to a breach of the peace and the tragedy of a communal disturbance. Some Muslims, when they heard about the date of Bal Thackeray's visit to Mahad, out of fear, sent their families to other places and some of them left Mahad themselves. Some Hindus and Muslims, probably having in mind what had happened during the February 1969 riots in Bombay, got their properties insured. Mahad, which was till then not a communally sensitive spot and where friendly and cordial relations had prevailed between the two communities, suddenly became a place full of communal tension, causing anxiety and apprehension to the public and concern to the administration and the Police.

Preventive measures prior to November 1969

85.50 The statements Exhibits P 1156 and P 1173 show the action taken respectively by the S.P., Kolaba, on the circulars and instructions issued by the Government and the I.G.P. and the action taken by the D.M., Kolaba, on the resolutions and circulars of the Government. As Mahad was a town free from communal tension until the controversy about the disputed property started as a result of the said speech made by Bal Thackeray on November 2, 1969, it is not necessary to set out the details of the preventive measures taken by the D.M. or the S.P. prior to that date. What is really necessary for the purpose of this Inquiry is to consider the adequacy of the preventive measures adopted after a communal situation came into being as a result of the said speech.

Preventive measures after October 1969

85.51 The first question which arises for consideration in judging the adequacy of the preventive measures taken by the administration and the Police after October 1969 is whether they were aware of the developing situation in Mahad and if so what steps they took to meet it and whether such steps were adequate to meet the exigencies of the situation. The evidence reveals that the administration and the Police were at each stage aware of the developments. They were aware of the challenge thrown by Bal Thackeray in the course of his Chowpatty speech and the various incidents which were taking place in Mahad and of the proposed visit of Bal Thackeray to Mahad and postponement thereof from time to time.

85.52 The Local Intelligence Branch at Alibag drew S.P., Khan's attention to the report in the Inquilab (Ex. P 1064) of the speech made by Bal Thackeray on November 2, 1969 at Chowpatty (P.W. 97/3/3319). S.P., Khan thereupon acted promptly. He instructed P.S.I., Mali of the L.I.B. to make discreet inquiries to find out when Bal Thackeray was likely to visit Mahad. He also gave instructions to the P.S.I., Mahad to be vigilant because he apprehended trouble if Bal Thackeray visited Mahad as announced by him. Khan personally went

to Mahad on November 11, 1969, discussed the matter with the local police officers and studied the record available at the Mahad Town Police Station concerning the dispute over the disputed property including the confidential reports of the police station to find out if there was a dispute between the two communities with respect to the possession of the disputed structure. He also perused a copy of the said order of the City Survey Officer and the Mamlatdar, Mahad, dated July 22, 1961 (Ex. P 1061). He then talked to the President of the Mahad Municipal Council and about eight to ten other prominent local persons of both communities whose names he obtained from the P.S.I., Mahad. From the perusal of this record and as a result of these discussions he ascertained that there was no dispute between the two communities with respect to the possession of the disputed structure and that it was an admitted fact that the possession was with the Muslims. He showed to the P.S.I. the news report in the 'Inquilab' (Ex. P 1064) and told him that Bal Thackeray was likely to visit Mahad in the near future and the P.S.I. should therefore keep in contact with the persons who normally gave the Police such information so that he might come to know in advance about the date of Bal Thackeray's visit and that on learning it he should inform him (that is, Khan) promptly [P.W. 97/1(6)/3212(2), 6/3222]. By his secret letter dated November 18, 1969 addressed to the D.I.G. (Int.) (Ex. P 1065) S.P., Khan drew his attention to the report of Bal Thackeray's said speech in the 3rd November 1969 issue of the 'Inquilab'. In this letter he stated that though there was no branch of the Shiv Sena in Mahad, if Bal Thackeray entered the disputed structure it might create communal ill-feeling between the Hindus and the Muslims.

85.53 The D.I.G. (Int.) by his letter dated November 27, 1969 (Ex. G 211) intimated to the S.P., Kolaba, that a report had been received that the Muslims in Mahad were nervous on account of Bal Thackeray's said speech and a mild stir had been created as a result of the details thereof appearing in the 'Inquilab' and that Bal Thackeray was likely to visit Ratnagiri and Kolaba Districts in order to mobilize support for the proposed demonstrations before the A.I.C.C. (All-India Congress Committee) Plenary Session in Bombay in December 1969, to demand an early decision on the Maharashtra-Mysore boundary dispute. By this letter he requested the S.P. to keep a close watch on the situation and promptly report any development and also to keep the D.M. informed in the matter. By his report dated November 29, 1969 (Ex. G 212) the D.I.G. (Int.) acquainted the Home Secretary with the situation and also pointed out that as Bal Thackeray was likely to tour Konkan shortly in order to enrol volunteers to stage demonstrations at the A.I.C.C. Session to be held in Bombay, it was likely that he might visit Mahad and try to carry out his plan. A copy of the English translation of the said news-item in the 'Inquilab' dated November 3, 1969 was enclosed along with the said report (Ex. G 212). A copy of this report was also submitted to the I.G.P. By his letter dated December 5, 1969 (Ex. G 213) the D.I.G. (Int.) put the D.M.,

Kolaba, in the picture. In the said letter he pointed out that Bal Thackeray was likely to visit Ratnagiri and Kolaba Districts to mobilize support for the proposed demonstrations before the A.I.C.C. Plenary Session to be held in Bombay and that the proposed two day conference of the C.K.P. community on the 17th and the 18th January 1970 would also afford him an opportunity to carry out his intention. The said letter further stated :—

“ In the meantime the legal position with due regard to past history, custom and usage in respect of the place in question should also be examined in advance so that future line of action and approach to the problem could be made more realistic and convincing.”

85.54 On learning that Bal Thackeray was going to visit Mahad on December 28, 1969 to establish a branch of the Shiv Sena there, the D.I.G. (Int.) by his letter dated December 22, 1969 to the S.P., Kolaba (Ex. G 215) [with copy to P.S.I., Int. (C.I.D.) Kolaba], communicated this intelligence to him and asked him to arrange to cover Bal Thackeray's visit and furnish a detailed report about his activities along with verbatim reports of his speeches and to keep a proper bandobast during his visit to avoid any breach of the peace. On December 22 and 28, 1969 police bandobast was kept at Mahad by drafting police personnel from outside by reason of Bal Thackeray's expected visit on these days [P.W. 97/1(7)/3212(3), P.W. 98/1(7)/3243(2)]. Thereafter on receiving information that Bal Thackeray intended to visit Mahad on January 17, 1970 to attend the C.K.P. convention to be held at Mahad on January 17 and 18, 1970 and address a public meeting and that he might also visit the disputed structure, by his wireless message dated January 9, 1970 (Ex. P. 1134) to the S.P. and the D.M., Kolaba, the D.I.G. (Int.) communicated this fact to them and requested them to make necessary arrangements for the maintenance of law and order. The Addl. D.M., Kolaba, forwarded a copy of the said wireless message to the Taluka Executive Magistrate, Mahad, and the S.D.M., Mahad, for information and necessary action. By his report dated January 12, 1970 (Ex. G 214) the D.I.G. (Int.) also intimated this fact to the Home Secretary and further set out in the said report the result of the inquiries about the disputed structure and also reported about the said representation dated December 19, 1969 (Ex. P 1066) made by the Mahad Muslims to the D.M. He also informed the Home Secretary that the district authorities had been made aware of the situation and were asked to take necessary precautionary measures. The D.I.G. (Int.) also wrote a letter dated January 12, 1970 to the S.P., Kolaba (Ex. G 216) in connection with the proposed visit of Bal Thackeray to Mahad on January 17, 1970 and stated :—

“ In view of the brewing trouble between the local Hindus and Muslims, Shri Thackeray may exploit this occasion and create a law and order problem.”

He requested the S.P. to take action as directed in his said letter dated December 22, 1969 (Ex. G 215).

Intelligence reports on Bal Thackeray's plans

85.55 On January 13, 1970 D.I.G. (B.R.), Gokhale (G.W. 4) was in Bombay and had a discussion with D.I.G. (Int.), M. G. Mugve with respect to Bal Thackeray's proposed visit to Mahad on January 17, 1970. They thought that the possibility of Bal Thackeray's entering the disputed property could not be ruled out and it would, therefore, be better if an order under section 144 Cr.P.C. were kept ready to be served on him in case he attempted to go to the disputed property. They also discussed the issue and promulgation of an order under section 144 Cr.P.C. prohibiting all persons from entering the disputed property in case they received information or evidence of Bal Thackeray's intention to enter it (G.W. 4/42/3371, 46/3373). By his letter dated January 13, 1970 (Ex. G. 217) the D.I.G. (Int.) intimated to the I.G.P. about his discussion with D.I.G., Gokhale and the result of the inquiries about the disputed structure. The said letter further stated :—

“ At the moment, therefore, both the dilapidated mosque and the so-called Mahikavati Temple stand firmly in the name of the Muslims and if Shri Thackeray attempts to carry out his threats he would clearly be a trespasser. Thackeray has not alluded to his threat again since he made it and it is quite possible that he may do nothing about it. All the same both the D.I.G., B.R., and I thought that it would be worthwhile the S. P., Kolaba, keeping an order under section 144 ready prohibiting Thackeray from carrying out such a design to be served only if on arriving at Mahad he expressed his intention by gesture or words to do so. If, however, in the intervening period there is further clear evidence of Thackeray's criminal design more drastic preventive action may be required to be taken.”

85.56 A. R. Daffe, Deputy Commissioner of Police, Special Branch, Bombay, received information that Bal Thackeray accompanied by some Shiv Sena Municipal Corporators and Shakhapramukhs proposed to leave Bombay for Mahad in the morning of January 17, 1970 by a special S. T. bus, leave the next morning for Raigad Fort and return to Bombay the same evening and that though in his Chowpatty speech he had expressed his intention to break a coconut at the disputed structure, he had no plans to do so during this visit to Mahad. He communicated this information by his letter dated January 14, 1970 (Ex. G 255) to S. L. Chincey, S.P. (Int.).

85.57 By his letter dated January 15, 1970 (Ex. G 218) Assistant I.G.P., M. G. Katre informed S.P., Khan that Bal Thackeray would be visiting Mahad on January 17 and 18, 1970 and would address a public meeting on January 17, 1970 and also attend the convention of the C.K.P. community. He further pointed out to S.P., Khan that Thackeray had not alluded to his threat to break a coconut at the disputed structure and it was quite possible that he might do nothing about it. The said letter concluded as follows :—

“ However, it would be worthwhile if an order under section 144 prohibiting Shri Thakare from carrying out such a design be kept ready to be served on him only if arriving at Mahad he expresses

his intention to do so. If, however, in the intervening period, there is further clear evidence of Shri Thakare's criminal design, more drastic preventive action may be required to be taken. You may please keep these precautionary measures in view and have recourse to them according to the needs of the situation and the intelligence received by you."

85.58 Khan visited Mahad in the morning of January 15, 1970. He inspected the disputed structure and gave instructions to L.I.B., H.C., Mali to keep an order under section 144 Cr.P.C. ready and to promulgate it under his instructions. He returned to Alibag the same day (P.W. 97/64/3430).

85.59 What transpired in the night of January 15, 1970 is important. The evidence on this point is that of D.I.G.(B.R.), Gokhale (G.W. 4/42/3371, 48/3374) and S.P., Khan [P.W. 97/1(9)/3212(3), 6/3223, 40/3303]. On January 15, 1970 Gokhale was in Jalgaon for the public meeting which was to be addressed there by Khan Abdul Gaffar Khan. After the meeting he rang up D.I.G.(Int.), Mugve and gave him information about what had transpired at the said meeting. He also inquired from Mugve whether Mugve had received any further information about Thackeray's visit. Mugve communicated to him the intelligence which had been received by Dafle. Immediately thereafter Gokhale telephoned to S.P., Khan at Alibag.

85.60 Earlier, Khan had requested the D.M., Kolaba, to consider the necessity of issuing an order under section 144 Cr.P.C. prohibiting Bal Thackeray and his followers from entering Mahad Town and another order under section 144 Cr.P.C. prohibiting any person from entering the disputed property. Subsequently, however, the sub-inspectors of the L.I.B. and C.I.D. (Int.) of the Kolaba District, who had received information both from their Hindu and Muslim informants, informed S.P., Khan that it was not Thackeray's intention to visit the disputed property, and that some Muslim leaders had approached Thackeray with a request that he should study the documents concerning the disputed property before taking the course of action declared by him in his said Chowpatty speech, and that Bal Thackeray had promised that during the course of his visit to Mahad he would meet the local Muslim leaders at the residence of Dr. Ahmedkhan Deshmukh (C.W. 32) and discuss the matter with them, and had further assured the Muslim leaders that he would not visit the disputed property. As appears from the report dated January 20, 1970 (Ex. P 1111) signed by V. P. Vasekar who was holding charge as S.P., Kolaba, during Khan's absence on leave, but which was prepared according to the instructions given by Khan, inquiries were also made from Madhav Bhide, the Sakhapramukh of the Panvel Branch of the Shiv Sena, and Bhide gave the same information. When D.I.G.(B.R.), Gokhale rang up Khan in the night of January 15, 1970, D.I.G., Gokhale asked Khan what intelligence he had received and about the plans which he had made for Bal Thackeray's visit. Khan informed him about the intelligence collected by the Sub-Inspectors of the L.I.B.

and the C.I.D. (Int.). Gokhale thereupon informed Khan that he too had received the same information and asked Khan to take necessary precautions in consultation with the D.M. against the contingency of Bal Thackeray going to the disputed property. Khan has deposed (P.W. 97/40/3303) :—

“ My opinion that there should be a prohibitory order prohibiting the entry of all persons on the disputed site and of Bal Thackeray and his followers into Mahad at the time of Bal Thackeray’s visit on 17th January 1970 was changed when I received information from the L.I.B. and the State (C.I.D.) (Int.) that Bal Thackeray was not going to visit the disputed site and on confirmation of that information in my telephonic conversation at about 10-30 or 11 p.m. on 15th January 1970 with the D.I.G. (B.R.).”

85.61 The fact that a telephonic conversation took place between D.I.G., Gokhale and D.I.G. (Int.), Mugve and that thereafter Gokhale spoke to S.P., Khan on the phone is borne out by the following endorsement made by Mugve on the letter dated January 14, 1970 (Ex. G 255) from Deputy Commissioner Dafle to Chiney, S.P. (Int.) :—

“ D.I.G. Bombay Range spoke to me in the night from Jalgaon when I gave him up-to-date picture of Thackeray’s visit to Mahad. I also said that while we should be prepared with prohibitory orders and the like in the event of last minute decision to precipitate a controversy by him, we should at the same time not expose our plans before hand or make our bandobust obvious as to provoke a show down.

“ D.I.G. said that he would speak to the S.P.

M. G. MUGVE,
15/1 ”

85.62 The information received by Khan was conveyed by him personally to the D.M., Kolaba. They had a discussion and it was decided that in the circumstances it was not necessary to issue any prohibitory orders, but the Taluka Executive Magistrate, Mahad, should be requested to keep ready an order under section 144 Cr.P.C. prohibiting any one from entering the disputed property and the order should be promulgated and served on Thackeray personally only if the discussions at Dr. Deshmukh’s place failed and if Bal Thackeray indicated an intention of going to the disputed property. The evidence of D.M., Savanur on this point has been corroborated by S.P., Khan [P.W. 98/1 (9-10)/3243(3), 4/3244].

85.63 As appears from the said report dated January 20, 1970 (Ex. P 1111) no leaflets were distributed for Bal Thackeray’s visits announced for December 1969, but on January 16, 1970 printed leaflets were distributed by the Shiv Sena in Mahad announcing that Bal Thackeray would come to Mahad on January 17, 1970 at 5-30 p.m. and would hold a public meeting at the Azad Maidan and would inaugurate the Mahad Branch of the Shiv Sena. As there was no other programme mentioned in the said leaflets, the leaflets appeared to corroborate the information received by the Police that Bal Thackeray

was not going to carry out his intention of visiting the disputed structure.

Did the Muslim leaders have an interview with Bal Thackeray ?

85.64 The question which now arises for consideration is whether the information received by the L.I.B. and C.I.D. (Int.) of the Kolaba District as also by A. R. Dafle, Deputy Commissioner of Police, Special Branch, Bombay, about the visit of the Muslim leaders of Mahad to Bal Thackeray and about Bal Thackeray's plans to interview the Muslim leaders and have a discussion with them at Dr. Deshmukh's place during the course of his visit to Mahad was correct. As the evidence referred to a little earlier clearly shows, this intelligence was received not from just one source but from different sources, namely, from Hindu and Muslim informants in Mahad as also from informants in Bombay. The correctness of this information is corroborated by the evidence of Dr. Mrs. Kazi. She has deposed [M.M.W. 1/1(13)/3317 (6)] :—

“ I say that Shri S. K. Kazi and others had also seen Shri Marathe in the last week of January and explained to him the rights of Muslim Community in the said land with documentary evidence. Shri Khalil Alli Kazi also saw Shri Manohar Joshi in the same week and explained to him about the right and title of the Muslim Community over the said land and their peaceful possession thereof. Both Shri Marathe and Manohar Joshi had assured the said visitors that the whole matter will be thought over by their leader Mr. Bal Thakre and no undesirable step would be taken in the matter.”

A little later while referring to what happened on January 17, 1970 she has deposed :—

“ Mr. Bal Thackeray seems to have played a dirty trick by keeping the Police and the people in dark. He arrived at the spot in a picturesque procession, made a brief speech, ascended the hillock, broke a coconut, sprinkled ‘ gular ’ in the air and hoisted his party's flag on a Muslim mosque and cemetery.”

The question of Bal Thackeray playing “ a dirty trick by keeping the Police and the people in the dark ” would not arise unless it had been given out and believed that he was not going to visit the disputed property, but would have discussions with the local Muslim leaders.

85.65 In view of the allegation that Bal Thackeray was going to meet the local Muslim leaders at Dr. Deshmukh's house, the Commission summoned Dr. Deshmukh and examined him as a witness. Dr. Deshmukh stated that he had not gone to Bombay at any time to meet Bal Thackeray. He also disclaimed any knowledge of the fact whether any Muslim leaders from Mahad had gone to Bombay prior to January 17, 1970 to meet Bal Thackeray (C.W. 32/2/3413). With respect to what transpired on January 17, 1970, he has deposed (C.W. 32/3/3413-4) :—

“ My dispensary is next to my residence. On January 17, 1970 at about 9 a.m. Dr. Baburao Mehta came to my residence and met me.

He told me that Bal Thackeray was coming to Mahad that evening. He further told me that he was not coming to Mahad to perform the ceremony of breaking the coconut at the disputed place but he was coming to open the Shiv Sena Branch in Mahad. He further told me himself that there was tension amongst my community people with respect to the disputed place and requested me to tell them not to get panicky. He further suggested that if the Muslims had any documentary evidence with respect to the disputed place, he would bring Bal Thackeray to my place for these documents to be shown to him. I told him that I was not one of the leaders of my community and that if he could wait for about five minutes I would send for some of the leaders and he could talk over the matter with them. I sent for Hasanmiya Pansare (the deponent of affidavit No. 316) and Gaffoor Katare and Abdulla Shahabuddin Mapkar (M.M.W. 2). I do not remember whether I sent for any other person or persons. They came to my place and had a talk with Dr. Baburao Mehta. Meanwhile I was called away to my dispensary to attend to a patient who had come to me from a nearby village, a large part of my practice being from the nearby villages. After about half an hour Dr. Baburao Mehta came to my dispensary and told me that he was leaving and that he would let me know by about 1-30 p.m. I, however, did not hear anything further from him. None of the Muslim leaders also met me thereafter. No one had come to my dispensary or to my residence that afternoon or evening to meet Bal Thackeray. I was busy in my dispensary as usual throughout that day till late at night.”

85.66 According to Dr. Mrs. Kazi, on January 17, 1970, after Thackeray had broken the coconut, sprinkled ‘gular’ and hoisted a flag on the disputed structure and his motorcade had moved on, she learnt that he was to go to Dr. Deshmukh’s house and meet the Muslim leaders there and look at the documents; she thereupon rang up Dr. Deshmukh to verify this information and told him that even if her husband was absent, Dr. Deshmukh should have informed her about this meeting; Dr. Deshmukh, however, denied that any such meeting had been arranged. According to her, he spoke hesitatingly on the telephone and she could not, therefore, say whether his denial was true or not (M.M.W. 1/32/3332). Dr. Deshmukh has, however, deposed that he did not remember whether he had received such a telephone call from Dr. Mrs. Kazi (C.W. 32/4/3414). S. P. Khan had also received information that on January 17, 1970 the Muslim leaders were waiting for Bal Thackeray at Dr. Deshmukh’s house [P.W. 97/1(9)/3212(4), 18/3233].

85.67 The evidence of Dr. Baburao Mehta on this point, as on most other points, was unreliable and was given in a very unsatisfactory manner. He deposed (C.W. 46/4/3955, 10/3959) :—

“On January 17, 1970 I had gone to see Dr. Deshmukh at his residence. I told him that there was no cause whatsoever for the Muslims to feel panicky and that the Hindus were not going to do

anything and were not going to create any trouble of any sort. I did not tell Dr. Deshmukh that Bal Thackeray would not go upto Mahikavati or would not break a coconut there. I did not know what Bal Thackeray's intentions were. At that time the Muslims were very frightened and panicky and they had sent their womenfolk to the villages, though the Hindus had done nothing to give them cause for this. I considered this as an insult to the Hindus.

“I do not now recollect whether I met Hasanmiya Pansare or Gaffoor Gatare or Abdulla Shahabuddin Mapkar (M.M.W. 2) at Dr. Deshmukh's place on January 17, 1970. I did not tell Dr. Deshmukh that if the Muslims had any documentary evidence with respect to the disputed place, I would bring Bal Thackeray to his place for the documents to be shown to him. I might have seen Dr. Deshmukh twice on January 17, 1970. On both the occasions that I met Dr. Deshmukh on January 17, 1970 I had gone to his residence and not to his dispensary. I went to see him for the second time on January 17, 1970 because our conversation remained incomplete as a patient had come to see him. On the second occasion on January 17, 1970 my talk with Dr. Deshmukh was about Mahikavati Temple. On this occasion I told Dr. Deshmukh that Mahikavati Temple belonged to the Hindus and Muslims themselves should hand it over to the Hindus. I further told him that the temple was lying disused and even though it was in a Muslim Mohalla, the Muslims should themselves hand it over to the Hindus. I suggested to Dr. Deshmukh that the Muslims should hand over this site to the Hindus even though this site was not in the possession of the Muslims but because it was entered in their name since 1906. Dr. Deshmukh told me that he would consult his other Muslim colleagues and let me know after consulting them. I cannot remember positively, but I might have told Hasanmiya Pansare or Gaffoor Gantare (Gatare) or some other Muslims about showing any documentary evidence the Muslims might have with respect to the disputed site to Bal Thackeray. This talk must have taken place on the same day, namely, January 17, 1970. I went on January 17, 1970 to see Dr. Deshmukh because there was some tension in the town on that day and he was a responsible member of the Muslim Community. The tension in Mahad on that day was because the Muslims were afraid that Bal Thackeray would carry out the intention declared by him at the Chowpatty meeting. The intention declared by Bal Thackeray at the Chowpatty meeting was that he would break a coconut at the Mahikavati Temple. It did not occur to me that if Bal Thackeray were to break a coconut at Mahikavati Temple it would lead to some commotion in the town. I did not tell Dr. Deshmukh or any other Muslim that Bal Thackeray would not be going to the disputed site.”

85.68 One fact none the less clearly emerges from the above rigmarole which is Dr. Baburao Mehta's evidence on this point, namely, that he did have a talk with the Muslim leaders about showing to Bal

Thackeray the documentary evidence which they might have with respect to the disputed property. It is clear that Dr. Baburao Mehta went to see Dr. Deshmukh to discuss Bal Thackeray coming to Dr. Deshmukh's place for being shown any documentary evidence which the Muslims might have with respect to the disputed structure and that the other Muslim leaders did have a talk with Dr. Baburao Mehta in Dr. Deshmukh's house on the morning of January 17, 1970. There would be no occasion for this unless it had been previously arranged or tentatively arranged or suggested that a meeting should take place between Bal Thackeray and the local Muslim leaders in Dr. Deshmukh's house. That such a meeting was to take place or was contemplated is also shown by the information received by Dr. Mrs. Kazi which led her to telephone Dr. Deshmukh as also the information received by the S.P. Bal Thackeray, though a notice was issued to him by the Commission, has not appeared before the Commission. In these circumstances, I find from the evidence that the information received by the Police about the interview which the Muslim leaders had with Bal Thackeray and about Bal Thackeray meeting them and looking at the documents in Dr. Deshmukh's house when he visited Mahad on January 17, 1970 was substantially correct.

Whether any order under section 144 Cr.P.C. was promulgated ?

85.69 It is the case of the Executive Magistrates and the District Police Officers that an order under section 144 Cr.P.C. prohibiting the entry of all persons into the disputed property was kept ready but was not promulgated in view of the intelligence received that Bal Thackeray was not going to visit the disputed property but was instead going to have a discussion with the local Muslim leaders. On the other hand, it is the case of S. B. Savant that such an order was issued and promulgated and in spite of its promulgation, the Police took no steps to prevent Bal Thackeray from going upto the disputed structure and putting up a Bhagwa flag. The witnesses, whose evidence is material on this hostily debated point, are S.P., Khan [P.W. 97/1(9)/3212(4), 64/3430], D.M., L. A. Savanur [P.W. 98/1(9)/3243(3), 4/3244], D. C. Joshi, Tahsildar, Mahad [P.W. 102/1(2)/3359(1), 2-3/3360-2, 5-6/3363-4] P.S.I. Vichare [P.W. 101/1 (2)/3336(1), 2/3337-8, 10-11/3345-8], S. B. Savant [C.W. 29/1(14), 3252(13), 9/3258, 12/3260, 40/3296], and Ebrahim Chichkar [C.W. 30/1(5)/3270(3), 2/3271].

85.70 By his letter dated January 15, 1970 addressed to the D.M., S.P., Khan stated (Ex. P 1121) that if Bal Thackeray paid a visit to the disputed structure and broke a coconut, it was likely that peace in Mahad and in the neighbouring areas would be disturbed. He, therefore, requested for the issue of a prohibitory order under section 37 of the Bombay Police Act, 1951, prohibiting Bal Thackeray, Datta Salvi and Manohar Joshi from going to the disputed structure and within an area of ten feet around it. As shown by Khan's diary, on January 15, 1970, he had gone to Mahad from Alibag. He visited the disputed structure and gave instructions to L.I.B., H.C., Mane that an order under

section 144 Cr.P.C. should be kept ready and promulgated under his instructions (P.W. 97/64/3430). He then left Mahad at noon. Thereafter Khan had a discussion with D.M., Savanur and it was agreed that an order under section 144 Cr. P.C. should be kept ready to be served in case of necessity (P.W. 98/4/3244). There is an endorsement made by Savanur on Khan's said letter dated January 15, 1970 (Ex. P 1121) to the effect, "Had a discussion with the S.P. An order under section 37 is not necessary." The S.P. returned to Mahad in the morning of January 17, 1970 taking with him additional police force as a matter of precaution [P.W. 97/9/3212(4)]. What happened in the meantime is to be found in the evidence of V. C. Joshi, the Taluka Magistrate, Mahad, and P.S.I., M. B. Vichare. According to Joshi, he received a wireless message on January 15, 1970 from D.M., Kolaba, that Bal Thackeray intended to visit Mahad on January 17, 1970 and that he might visit the disputed structure. On the same day, he received another letter from the S.D.M., Mahad, giving the same information and directing him to keep a close watch on the situation and to take all preventive measures to ensure peace. He has then stated, "Accordingly, a prohibitory order under section 144 Cr.P.C. was issued under No. MAG/WS/IV/1970, dated 16th January 1970, and sufficient number of copies of the order were handed over to the Police Sub-Inspector, Mahad (Shri Vichare) for promulgation." [P.W. 102/1(2)/3359(1)-(2)]. The handwritten office copy of the said order (Ex. P 1122) shows that it was first stated "15th January 1970" and figure '6' has been overwritten over the figure '5' so as to read "16th January 1970." The said office copy is in the handwriting of Aval Karkun Ghole. Joshi has stated that he did not know why the said figure was so overwritten, but he has stated that the said order was actually issued on January 16, 1970 [P.W. 102/1(2)/3359(1-2), 2/3360].

85.71 The usual practice followed in Mahad for promulgating prohibitory orders is deposed to by P.S.I., Vichare. According to this practice, copies of such orders were affixed at important places and the order was announced throughout the town by beat of drum. The important places at which copies of the orders were affixed were Salvad Naka, Bazar Peth, Lokhandi Bridge, the Municipal Office, Veereshwar Temple, S. T. Stand, the Mahad Town Police Station and the Mamlatdar's office and the prohibited area. Two copies of the order were kept for police records (P.W. 101/9/3343). According to Joshi's evidence, on January 15, 1970, ten typed copies of the said order were made out and handed over to P.S.I., Vichare in the afternoon of January 16, 1970 at about 4 p.m. or 5 p.m. for the purpose of promulgating it by affixing the copies in conspicuous places in the town and for serving them on such persons as might be necessary. Joshi has deposed to the circumstances in which such an order would be cyclostyled. According to him, if the Police required a prohibitory order to be cyclostyled, they would get it cyclostyled. The Police, however, did not want this particular order to be cyclostyled because they informed him that ten copies would

be sufficient (P.W. 102/2/3360-1). The material portion of the said order is as follows :—

“ The following are prohibited within the limits of Mahad Municipality from 11 a.m. on the date 17th January 1970 to 8 p.m. on the date 18th January 1970 :—

(1) Nobody shall enter in the Mahad City Survey No. 337/1.

(2) Further nobody shall enter the limits of Shah Bahiri situate at the south-west of the Chavdar Tank at Mahad in groups of five or more than five.”

At the foot of the office copy of the said order (Ex. P 1122), there is an endorsement by Joshi to the effect that “ Ten copies of the order are sent herewith for publication. They should be published at principal places in the town.” The order thus prohibited the public from entering altogether upon the disputed property and in groups of five or more within the limits of Shah Bahiri. Joshi has deposed that he was not informed that the said order was not promulgated and that he came to learn this fact only in the evening of January 17, 1970 after Bal Thackeray and his companions had gone upto the disputed structure. He has testified that after Bal Thackeray came down from the mound, he stood at the foot for about a minute or so. Joshi, who was at the time at the Octroi Naka, came out and proceeded towards the mound. Vichare came up to him and met him half way and told him that in accordance with the S.P.'s instructions the said order had not been promulgated (P.W. 102/3/3362, 6/3364).

85.72 Vichare's evidence is in several respects in conflict with that of Joshi. Vichare's demeanour in the witness-box has not impressed me. He has prevaricated on a number of points and several times the truth had to be extracted from him by close questioning. According to Vichare, on receipt of the information that Bal Thackeray was going to visit Mahad on January 17, 1970, he had submitted a report to the Taluka Executive Magistrate, Mahad, on January 15, 1970 requesting him to issue an order under section 144, Cr.P.C. prohibiting all persons from entering the disputed structure on January 17 and 18, 1970. On January 16, 1970 at about 7 p.m. or 8 p.m., he went to the office of the Taluka Executive Magistrate to inquire whether the order was ready and he received seven or eight copies of the said order. He was told that the copies were to be cyclostyled and after they were cyclostyled, further copies would be given to him. The seven or eight copies which were given to him in the evening of January 16, 1970 were for immediate use, while the cyclostyled copies were to come later. He has deposed that he did not at any time inform the Taluka Executive Magistrate that he had not promulgated the prohibitory order. The reason he gave was that Joshi was present along with him when he had gone to see the S.P. at the Inspection Bungalow in the morning of January 17, 1970 and was present throughout the conversation, and had heard Khan tell Vichare that according to the information received by him, Bal Thackeray was going to have discussion with the Muslim

leaders at Dr. Deshmukh's place and it was, therefore, not necessary to promulgate the said order [P.W. 101/1(2)/3336(1), 9/3343-4-11, 3448]. Joshi has, however, denied that he was present at the Inspection Bungalow in the morning of January 17, 1970 when Khan had a talk with Vichare (P.W. 102/2/3361).

85.73 Between Joshi and Vichare, I prefer the evidence of Joshi. The said order directed Vichare to promulgate it in the town—a direction which he did not comply with, and it is obvious that in order to get out of this situation, he has come out with the story that Joshi was aware that the said order was not to be promulgated and there was, therefore, no question of his not complying with the said direction.

85.74 According to Savant, the said order was promulgated by beat of drum and by distributing to the people in the town typed copies bearing the signature and the seal of the Taluka Executive Magistrate, Mahad, and by pasting such copies on lamp posts (C.W. 29/9/3258). A typed copy of the said order bearing the signature and the seal of the Taluka Executive Magistrate was annexed as Annexure 1 to the affidavit of Savant. Savant also produced in the witness-box another typed copy of the said order bearing the signature and the seal of the Taluka Executive Magistrate (Ex. No. 81). Savant has deposed that he did not remember hearing the said order being proclaimed by beat of drum. He has further deposed that on January 17, 1970 he saw some papers pasted on lamp posts and that he did not go up to a lamp post to read what they contained, but he learnt that they were copies of an order under section 144, Cr.P.C. prohibiting entry into the disputed structure when that day some of his workers came to his place and there was a discussion on what would happen, and some of them told him that as an order under section 144 Cr.P.C. had been promulgated, Bal Thackeray would be arrested if he tried to enter the disputed structure, while others said that whether such an order was promulgated or not, "the Police would not have the guts to arrest him" (C. W. 29/40/3296).

85.75 Chichkar has admitted that the only reason why he had mentioned in his affidavit that the Taluka Executive Magistrate had banned entry into the disputed property by an order under section 144, Cr.P.C. was that it was rumoured in the town that such an order had been passed, but that he himself had not been served with this order nor had he received a copy thereof. Subsequently, however, he changed his answer to say that he had himself heard the said order being announced through a megaphone. He could give no explanation why he had earlier omitted to give this reason (C.W. 30/2/3271). Chichkar's evidence on this point is hardly such as to inspire any confidence and it cannot be believed.

85.76 There is a certain amount of mystery surrounding the circumstances in which Savant obtained the said two typed copies of the said order signed by the Taluka Executive Magistrate, Mahad, and bearing his seal. A look at these two copies is enough to show that

they could not be copies which were pasted or affixed on any conspicuous place in the town or which were distributed amongst the public, but were copies which had come from a file. According to Savant, when he was collecting materials for filing his affidavit before the Commission, he asked his workers to get him various documents including copies of the said order and they accordingly brought and gave him the said two copies, one of which he annexed to his affidavit and the other which he produced before the Commission in the course of his evidence (C.W. 29/40/3296).

85.77 According to S.P., Khan, he did not give any instructions to Vichare about what to do with the copies of the said order which he had received from Joshi because, as the said order was not promulgated, the matter was of no consequence. Whether the said order was promulgated or not there would be no necessity for Khan to give any instructions in this respect to Vichare, for had the said order been promulgated the usual routine would have been followed and had the said order not been promulgated the matter normally would not be of any consequence (P.W. 97/71/3434).

85.78 According to P.S.I., Vichare (P.W. 101/11/3347), on January 18, 1970, he locked away the typed copies of the order which he had received from Joshi in the box in the police station in which confidential papers were kept. The key of the said box remained with him. On April 22, 1970, when he was transferred from Mahad and handed over charge to his successor P.S.I., L. R. Gadkar (P.W. 106), he showed Gadkar the important files which were in the confidential box but did not show him everything that was in it and he was unable to say whether the typed copies of the said order were in the box at that time. According to P.S.I., Gadkar orders issued under section 144, Cr.P.C. were kept in a file at the police station, which was looked after by the constable who attends to all confidential files, though the file containing copies of orders under section 144, Cr.P.C. which have been promulgated was not a confidential file. He has further deposed that when he took charge, the file containing orders issued under section 144, Cr.P.C. was in the box in which confidential papers were kept. One key of this box used to remain with him and the other with the constable in charge of the confidential papers. According to him, after an order under section 144, Cr.P.C. has been promulgated only one copy was kept on the file at the police station. Copies of all orders under section 37 of the Bombay Police Act and section 144, Cr.P.C. were kept in the same file. When he took charge, he had checked the contents of the confidential box and found only one copy of the said order. He also did not find more than one copy of any order under section 144, Cr.P.C. (P.W. 102/2/3437, 4/3439). According to Vichare, two copies of every order under section 144, Cr.P.C. used to be kept for the records of the police station (P.W. 101/9/3343).

85.79 Dy. S.P., N. P. Pikale was the S.D.P.O., Mahad, in July 1970. Pikale died in or about December 1970 (P.W. 97/63/3430). By

his report dated July 4, 1970 (Ex. P 1182), Pikale stated that Gadkar sometimes did not behave himself properly while dealing with official matters and sometimes acted "thoughtlessly, which might one day bring bad report to the police administration". In the said report it was further stated that it was learnt that Gadkar had handed over from his office records a spare copy of the said order to Savant, and that he had inquired from Gadkar about handing over this copy to Savant without consulting his superiors, and that Gadkar had admitted the said fact, but had excused himself on the ground that Savant was an M.L.A. The report continued :—

" It seems, Shri Sawant is collecting material to place before the Madon Commission on behalf of the Muslims of Mahad against the Shiv Sena.

" In my opinion, the S.I. should not have played into the hands of Shri Sawant to favour him in his work by immediately handing over the document without realising the consequences of his action."

Pikale had made only oral inquiries from Gadkar and had not recorded his statement (P.W. 97/63/3429).

85.80 On receiving Pikale's report S.P., Khan gave directions to obtain Gadkar's explanation immediately and accordingly by the letter dated July 9, 1970 (Ex. P 1183) signed on behalf of S.P., Kolaba, by Salgaonkar, Home Police Inspector, Alibag, Gadkar was called upon to furnish his explanation within four days through the S.D.P.O., Mahad. In the normal course the said letter would take some time to reach Mahad and come into the hands of Gadkar. But even before the period of four days from the date of the said letter expired, a reminder was sent by Salgaonkar on July 11, 1970. A second reminder was sent on August 12, 1970 and a third reminder on December 10, 1970. Gadkar submitted his explanation in writing by his letter dated August 16, 1970 (Ex. P. 1184) through the S.D.P.O., Mahad, who forwarded it to the S.P. on December 23, 1970. It was received in the S.P.'s office on December 25, 1970 and seen by Khan on December 29, 1970. Gadkar's explanation, as given in the said letter, was that Savant had come to the Mahad Town Police Station four or five times and had wanted to see the said order but it was not shown to him. Thereafter while he was in the office Savant came there and showed his displeasure. Thereupon taking into consideration that he belonged to the ruling Congress party and was an M.L.A. elected from Mahad on the Congress ticket, he gave him the said order to see. After seeing the said order Savant returned it to Gadkar. In the said letter Gadkar expressed his regret for any mistake which he might have committed. In the said letter it was expressly stated, " The said responsible person asked for the said notice for seeing it and he returned it to us. *It is there in our office.*" In his forwarding letter dated December 23, 1970 the S.D.P.O. stated that the said "order was as a precautionary measure and was to be promulgated in times of emergency" and recommended that Gadkar's action should be overlooked. S.P., Khan made an endorsement on

Gadkar's letter on December 29, 1970 to the effect that Gadkar should exercise caution in this respect. The words in Gadkar's letter emphasized above, namely, "It is there in our office", clearly show that according to Gadkar, he did not allow Savant to take away the copy of the said order, and that the copy was at the police station. No such copy has, however, been produced before me and I am informed that no copy of the said order is to be found in the file of the Mahad Town Police Station. Further, there is no typed or cyclostyled copy of the said order to be found in the file of the Taluka Executive Magistrate, Mahad; the only copy of the said order in that file being the said handwritten copy (Ex. P 1122). Khan has stated that since Gadkar had given his explanation in writing, there was no further inquiry which he could make from him, nor could he make any inquiry from Pikale (as Pikale was dead) how he had come to state in his said report (Ex. P 1182) that Gadkar had given a copy of the said order to Savant. He also could not ascertain the correct position by checking the records of the Mahad Town Police Station as either on January 9 or 11, 1971 he handed over charge to his successor (P.W. 97/70/3434).

85.81 It is Savant's case that the Executive Magistrates and the District Police Officers had falsely made out a case that the said order was not promulgated and finding that a copy of the said order was annexed to his affidavit, they got a false report made against Gadkar and induced Gadkar to give his aforesaid explanation by assuring him that he would be let off with only a mild warning. Savant's affidavit was affirmed not in Mahad but in Bombay before the Registrar and Presidency Magistrate, Explanade, Bombay, on July 4, 1970 and was filed that very day in the office of the Commission. But the Commission's order dated July 7, 1970 copies of affidavits were not made available to any party nor inspection thereof allowed by the Commission until such party had completed the filing of all affidavits on its behalf and had filed its concise statement of the case. The filing of affidavits on behalf of the Police Officers and Executive Magistrates was not completed until October 1970. No inspection was taken on behalf of the Government or the Executive Magistrates and District Police Officers and it was only after the Commission passed its order on October 15, 1970 directing copies of all affidavits to be handed over to the Counsel for the Government for getting them cyclostyled for distribution to the other parties, that the copies of the affidavits were made available to the Government. Khan, therefore, could not have come to learn about the contents of Savant's affidavit earlier, though from Pikale's said report dated July 4, 1970 (Ex. P 1183) he knew that Savant was collecting materials to lay before the Commission. The suggestion that he had given any such assurance to Gadkar was denied by Khan (P.W. 97/70/3434). Beyond stating that his workers got him the copies of this order, Savant has vouchsafed no explanation of the manner in which his workers obtained these copies. When questioned by the Commission, he stated that he was unable to give the name or names of the

worker or workers who gave him these copies as he did not remember them and, therefore, he was unable either to call any of them in evidence or to furnish their names to the Commission to enable the Commission to summon them as witnesses. Mr. Rane, Counsel for the Executive Magistrates and District Police Officers, suggested that Savant or his workers got one copy of the order from the Mahad Town Police Station and the other from the file of the revenue authorities. Assuming it is so, there is still no explanation as to what has happened to the remaining copies. In this state of evidence, it has not been possible for the Commission to ascertain how and from whom Savant got these copies or what happened to the other copies.

85.82 In order to substantiate the case that the said order was not promulgated the Executive Magistrates and the District Police Officers have relied upon the fact that it is the usual practice for the Taluka Executive Magistrate issuing a prohibitory order under section 144, Cr.P.C., to receive a report about its promulgation either from the Police Patil or the Police and in the case of the order in question, Joshi had not received any such report. They have further relied upon the fact that under Government Notification, Home Department, No. 5996/2, dated January 20, 1930, made under section 134(2), Cr.P.C. and published in the *Bombay Government Gazette*, 1930, Pt. I p. 206 (Bombay Rules and Orders made under Central Acts, Volume I page 523), an order under section 144, Cr.P.C. is required to be published in the *Government Gazette*, while a copy of the said order has not been published in the *Maharashtra Government Gazette*. These facts, however, do not in any way prove that the said order was not promulgated. So far as the first point is concerned, there is on the record another order under section 144, Cr.P.C., namely, the order dated February 14, 1970 (Ex. P 1082). This order was distributed to people in the town and was also published by affixing it to the conspicuous places in the town and by announcing it by beat of drum. This order (Ex. P 1082) was modified by an order dated February 22, 1970 (Ex. P 1083). This order too was promulgated by being affixed to prominent places in the town. There is, however, only one report with respect to the promulgation of the order dated February 14, 1970 (Ex. P 1082), namely, a report dated February 15, 1970 from the Police Patil of Mahad (Ex. P 1167). This report is only with respect to the promulgation of this order by beat of drum and not with respect to its promulgation by affixing at conspicuous places in the town. Admittedly, there is no report made by either the Police Patil or the Police about the proclamation or the promulgation of the said order dated February 22, 1970 (Ex. P 1083) (P.W. 102/5/3363). So far as the fact of non-publication of the order in question in the *Maharashtra Government Gazette* is concerned, Joshi, has admitted that two or three days after the date of the said order he had prepared a forwarding letter with a typed copy of the said order attached to it to be sent to the Manager, Government Printing and Stationery, for publication of

the said order in the Gazette. He did not remember whether the said letter and its enclosure were despatched or not. Surprisingly enough, when he looked through the relevant file, Joshi found that it did not contain either the original of the said forwarding letter and its enclosure or the office copy of the said letter. He, however, pointed out that there was no entry in the outward register of the office of the Tahsildar, Mahad, showing that the said order was sent to the Government Printing and Stationery for publication (P.W. 102/2/3361-2, 5/3364). The mystery as to what happened to this forwarding letter and its copy remains unsolved, but the facts set out above divest the aforesaid two points by all importance.

85.83 Thus, the only direct evidence of non-promulgation is that of P.S.I., Vichare. If his evidence stood alone without any other corroborating evidence on the record, I would have had no hesitation in rejecting the case of non-promulgation of the said order. There are, however, certain incontrovertible facts on the record supported by documentary evidence which corroborate the facts that the said order was not and could not have been promulgated. The evidence, oral and documentary, referred to earlier in this chapter under the headings "Preventive measures after October 1969" and "Intelligence reports on Bal Thackeray's plan" does not leave any doubt that in view of the information received about Bal Thackeray's intention not to visit the disputed property but to meet the local Muslim leaders at Dr. Deshmukh's place, the superior officers changed their plan of action and decided not to promulgate any order under section 144, Cr.P.C., but to keep it ready to serve it on Bal Thackeray if, on arriving at Mahad, he showed an intention to visit the disputed structure, and that in view of this information Khan had instructed his subordinates to keep ready an order under section 144, Cr.P.C. and to promulgate it under his instructions. It is not conceivable that after the express instructions given by Khan, the subordinate officers would take it upon themselves to promulgate the said order. It is also significant that only ten typed copies of the said order were signed and sealed by the Taluka Executive Magistrate and handed over by Joshi to Vichare and no further copies were made thereafter for the purpose of publication nor was the order cyclostyled. Had the order been promulgated in the ordinary course, it would have been served upon Bal Thackeray and his followers when they entered Mahad to make them aware of its contents instead of physically preventing them, without any warning, from going upto the disputed structure. If the order had been promulgated by affixing it to the ten prominent places mentioned above, there would have been no copy left to serve upon Bal Thackeray. It is also obvious that had these ten typed copies been exhausted in affixing them on the prominent places above mentioned, two copies would not have been left for Savant to produce before the Commission.

85.84 In this context the speeches made by Bal Thackeray and Manohar Joshi at Kalyan in connection with the Durgadi Fort incident,

where they boasted about having committed a breach of the order under section 144 Cr. P.C., which have already been referred to earlier in this chapter, become highly relevant. In his Chowpatty speech also Bal Thackeray declared that he had committed a breach of the order under section 144, Cr. P.C., when he went to the Durgadi Fort. Had the order in question been promulgated, Bal Thackeray and his followers, even if not aware about it when entering Mahad, would have come to know about it later the same evening. If so, one would have expected Bal Thackeray to declare proudly at the public meeting held later that evening in Mahad that he had committed a breach of the said order. On the contrary, what he said at the said meeting was (Ex. G 258):—

“Even if section 144 had been promulgated in the Mahikavati area, I would have violated it along with my companions.”

85.85 Apart from the affidavits of Savant and Chichkar, who is his supporter and who had, as admitted by him, read a copy of Savant's affidavit before drafting his own, in none of the other affidavits is the fact of the issue or promulgation of the said order mentioned. On the contrary, the statement in Dr. Mrs. Kazi's affidavit, namely, “Bal Thackeray seems to have played a dirty trick by keeping the Police and the people in dark” show that the Muslims knew that such an order had not been promulgated.

85.86 In none of his speeches which have been brought on the record has Savant made a grievance that in spite of Bal Thackeray having committed a breach of an order under section 144, Cr. P.C., he was not prosecuted in respect thereof, though in such speeches he has made several grievances about the attitude of the Government and the Police towards the Shiv Sena and Bal Thackeray.

85.87 In the report dated January 19, 1970 (Ex. P 1111), which was signed by V. L. Vasekar, who was holding charge as S.P., Kolaba, during Khan's absence on leave and which according to the endorsement made at the foot thereof, was “typed as per instructions given by” Khan, it is stated :—

“Notices under section 144, Cr. P.C. applicable to the ‘chauthara’ (raised square) of the aforesaid Mahikavati Mandir were issued. However, taking into consideration the published programme of that place of Shri Bal Thackeray, the word given by him to the Muslim community and the arrangement for tea etc. made by the Muslim community at Dr. Deshmukh's place, it was thought proper to stay the enforcement of the notification under section 144, Cr. P.C. and, therefore, they were not affixed. As I thought that because of that Hindu-Muslim relations would become strained and that there was more danger of breach of peace by reason of the promulgation of the notification, the same was not promulgated.”

It is important to note that this is a contemporaneous report, prepared before any controversy with respect to the non-promulgation of the said order arose.

85.88 P.S.I., Vichare has also made a report dated January 19, 1970 on Bal Thackeray's visit. Though in this report it is not expressly stated that the order under section 144, Cr. P.C. was kept ready and was not promulgated, the fact that such an order was promulgated is also not mentioned. Had the said order been promulgated, this fact would have found a place in the said report. When he received the S.P.'s said report dated January 19, 1970 (Ex. P 1111) D.I.G.(B.R.), Gokhale by his letter dated January 24, 1970 Ex. G 253) pointed out that he had given instructions to Khan that orders banning the entry of Bal Thackeray and the other Shiv Sena leaders into the disputed structure and the offering of coconut by them should be kept ready and on noticing anything on their part of translating their design into practice, the orders were to be served on them and the intended act prevented. By this letter he inquired whether the D.M., Kolaba, had been approached for issuing such orders and, if so, whether any such orders had been issued. By his reply dated February 3, 1970 (Ex. G 254) Vasekar stated that such orders had been issued by the Taluka Executive Magistrate, Mahad, and had been kept ready for promulgation. This correspondence also goes to show that the said order was not promulgated.

85.89 For the reasons set out above, I hold that the said order dated January 16, 1970 under section 144, Cr. P.C. (Ex. P 1122) was kept ready, but was not at any time promulgated.

The police bandobast for Bal Thackeray's visit

85.90 On the morning of January 17, 1970, S.P., Khan with an additional police force went from Alibag to Mahad. On reaching Mahad he discussed the situation with the officers who had come to see him, and told them that in view of the information received, the D.M., and he had decided that the order under section 144, Cr. P.C. should not be promulgated. He also asked P.S.I., Vichare to keep copies of this order with him, so that if necessary, Khan could get them promulgated. About a thousand persons had gathered in Mahad that day to attend the C.K.P. Conference. Khan anticipated Bal Thackeray to come with about two hundred persons. He also expected some local people to join his procession at the outskirts of the town. Adequate police bandobast was kept near the disputed property. It included forty plain-clothes men who were distributed all round the vicinity of the disputed structure. Three sub-inspectors were also present there. Behind the mound about ten yards from the jetty near the Octroi Naka some tiles and bricks, unloaded from countrycraft, were stacked in such a manner as to form a wall. Fifty armed policemen were posted behind this wall. The police personnel, which was posted in this locality, was there not only for the purpose of Bal Thackeray's entry into Mahad, but it was to remain there till he left Mahad in order to guard against the possibility of his entering the disputed structure after his talk with the Muslim leaders had failed as also to guard against the possibility of some mischief-makers throw-

ing stones on the procession. Joshi, the Taluka Executive Magistrate, Mahad, was also present there for Bal Thackeray's arrival. Khan himself was present and he had, therefore, not given any specific or particular instructions to the policemen and they were to follow the instructions which he would give them, if required (P.W. 97/7/3223-4, 37/3302, 64/2430). As appears from the report dated January 19, 1970 made by P.S.I., Vichare (Ex. P 1165), the other police officers present near the disputed property were Dy. S.P., Khan, S.D.P.O., Mahad, C.P.I., Salunke, and P.S.Is., Gadkar then attached to the Panvel City Police Station, Kulkarni from the Khalapur Police Station, Patil from the Poladpur Police Station, Mali of the L.I.B., Mahad, and Hundekari and Haridas of the State Intelligence and Vichare of the Mahad Town Police Station (P.W. 101).

Bal Thackeray's arrival and the incident at the disputed structure

85.91 The broad outlines of what happened when Bal Thackeray arrived at Mahad in the afternoon of January 17, 1970 are not in dispute. He came in a motorcade ; and as the motorcade was passing by the disputed structure, he stopped his car, and some other cars also stopped. Accompanied by some Shiv Sainiks, Bal Thackeray got down from the car and from the base of the mound addressed the people. He then climbed the mound, and broke a coconut at the disputed structure. 'Gulal' was sprinkled outside the disputed structure so that it fell on the tombs ; and a flag was hoisted on one of the dilapidated walls, amidst cheers and shouts of the crowd which had assembled on the road. Bal Thackeray and the others then got down from the mound, got back into the car and the motorcade proceeded further. The order under section 144, Cr.P.C. which was kept ready was neither promulgated nor was it served upon Bal Thackeray or any of his followers. Bal Thackeray and the other Shiv Sena leaders went to Dr. Baburao Mehta's house, had tea and refreshments there. A public meeting was held in the evening, which Bal Thackeray and the other Shiv Sena leaders addressed. They spent the night at Dr. Baburao Mehta's place and left the next morning for Raigad, once again stopping at the disputed structure where Bal Thackeray paid obeisance to it. After visiting Raigad they returned to Mahad the same evening at about 6 p.m. and from Mahad they left for Bombay.

85.92 The eye-witnesses to the incident at the disputed structure are S.P., Khan (P.W. 97), Taluka Executive Magistrate Joshi (P.W. 102), P.S.I., Vichare (P.W. 101), C.P.I., Saluke (P.W. 105), Dr. Mrs. Kazi (M.M.W. 1), her husband Shujauddin Kazi (C.W. 13) and Abdul Kadir Kablay (M.M.W. 3). The Taluka Executive Magistrate and the police officers were there on bandobast duty, while the three private witnesses were in their houses, situate just opposite the disputed structure.

85.93 In respect of Bal Thackeray's visit, the S.P., Kolaba, made a report dated January 20, 1970 (Ex. P 1111) which though signed

by V. L. Vasekar, who was holding charge as S.P., Kolaba, during Khan's absence on leave, was prepared under the instructions of Khan. P.S.I., Vichare has also made a report dated January 19, 1970 (Ex. P 1165) on this visit. There is also an entry in the station diary of the Mahad Town Police Station with respect to this incident (Ex. P 1186). A news report of this visit appeared in the 20th January 1970 issue of the Marathi daily, the 'Navshakti' (Ex. P 1074), and another report in the 25th January 1970 issue of the Shiv Sena Marathi weekly, the 'Marmik' (Ex. G 269).

85.94 We will now examine this incident in detail. As mentioned earlier, about a thousand persons had already come to Mahad to attend the C.K.P. Conference. Several Shiv Sainiks from Bombay and Thana also came to Mahad either on that day or a day or two earlier [C.W. 30/1(5)/3270(3)]. Soon after 1-30 p.m., the police personnel began to arrive near the Octroi Naka for bandobast (M.M.W. 1/26/3328). Taluka Executive Magistrate Joshi arrived there at about 2 p.m. or 3 p.m. At about 3 p.m., about a hundred Shiv Sena youths from Mahad went to the Bombay-Agra Road to receive Bal Thackeray. At first, about thirty to forty Shiv Sainiks arrived by the Bombay-Ratnagiri S.T. bus. Thereafter came Bal Thackeray's motorcade. Along with Bal Thackeray were the other Shiv Sena leaders, namely, Manohar Joshi, Datta Salvi, Pramod Navalkar and Arun Mehta. They were received by the Shiv Sena deputation from Mahad and were taken in a procession, accompanied by a band. The procession commenced at about 4-30 p.m. (Ex. P 1111). Bal Thackeray was in a big car, probably an Impala according to S.P. Khan (P.W. 97/29/3229). According to the S.P.'s said report (Ex. P 1111), Bal Thackeray's motorcade consisted of a special S.T. bus carrying about one hundred and fifty Shiv Sainiks, a jeep, nine small cars and a motor cycle. The motor cyclist led the procession. Bal Thackeray's car was the ninth in the motorcade; behind his car was a jeep and then the S.T. bus. According to Vichare, his motorcade consisted of six to seven motor-cars and two S.T. buses (P.W. 101/2/3337). The discrepancy in the number of cars and S.T. buses is immaterial. The material point on which there is a controversy is whether there were any trucks in Bal Thackeray's motorcade, a question which will be considered later.

85.95 Shujauddin Kazi has alleged that the Police did not allow the Muslims to stand nearby [C.W. 31/1(14)/3276(3)]. Dr. Mrs. Kazi has alleged that as Bal Thackeray's motorcade was proceeding from Kemburli Naka to Gandhari Naka, some Muslim boys, who were painting the Navre Pir Dargah to make it ready for the Urs, were driven away by the Police (M.M.W. 1/32/3332). Vichare has denied these allegations. These allegations, however, find support from the news item in the 25th January 1970 issue of the 'Marmik' (Ex. G 269) in which it is stated, "The 'Green' people who had laid claims to the temple were nowhere in the vicinity although they had not forgotten to apply a coat of white lime-wash to the wall in front of the temple mischievously the previous day." I, however, do not attribute

any communal motive or bias to the Police in not allowing the Muslims to congregate at this place or to continue painting the Dargah. Assuming these allegations are correct, this action of the Police could only be with a view to prevent any untoward incident which might lead to the flaring up of a riot.

85.96 The motorcade was decorated with Shiv Sena flags as appears from the said news report in the 'Marmik' and from the evidence of Taluka Executive Magistrate Joshi (P.W. 102/7/3365) and Dr. Mrs. Kazi (M.M.W. 1/32/3331). According to Khan, Vichare and Joshi, the car carrying Bal Thackeray suddenly came to a halt near the disputed property. At that time S.P., Khan was standing outside the Navre Pir Dargah at a distance of about ten to fifteen feet from the car and Dy. S.P., Khan and Vichare were standing near him, while Joshi was standing at the Octroi Naka (P.W. 101/2/3337. 12/3348 ; P.W. 102/6/3364). Bal Thackeray with some of his followers jumped out of the car and dashed upto the structure. According to Khan, five or six other persons went upto the disputed structure with him [P.W. 97/1(9)/3219(4)]. According to the said report made by Vichare (Ex. P 1165), about fifteen to twenty persons accompanied him. Bal Thackeray was carrying a coconut. He entered the disputed structure. He then came out, stood on the plinth and made a short speech. By this time all the Shiv Sainiks in the other cars had got down (Ex. P 1111). The substance of Bal Thackeray's speech is mentioned in the entry in the Station Diary of the Mahad Town Police Station (Ex. P 1186) and in Vichare's said report (Ex. P 1165). Vichare and Joshi have also deposed about it in the course of their evidence. Bal Thackeray said that he had declared that the Mahikavati temple belonged to the Hindus and that he was going to offer a coconut to the deity and no one was going to take away what belonged to the Hindus. He then again entered the disputed structure and broke a coconut. One of the persons accompanying him sprinkled 'gulal' outside the disputed structure and it fell on some of the Muslim tombs. Another person hoisted a saffron-coloured flag on one of the walls. Bal Thackeray along with his followers then went back to their cars and drove away amidst shouts and cheers of "Shivajiki Jai", "Jai Chhatrapati", "Chhatrapati Maharajki Jai", etc.

85.97 According to the District Police Officers, Bal Thackeray and his followers made such a sudden rush sprinting up the mound that there was no time to do anything or to take any action. It is admitted by S.P., Khan that none of the police officers or policemen present there made the slightest move to prevent Bal Thackeray or any of his followers from going up the mound or breaking the coconut or sprinkling the 'gulal' or hoisting the flag, even though the man who hoisted the flag was carrying it in his hand when he came out of the car and Bal Thackeray, when he got out of the car, had a coconut in his hand [P.W. 97/7/3225, 1(8)/3212(4)]. According to S.P., Khan, the entire incident happened in "a matter of seconds". In their affidavits and evidence the official witnesses have tried to make

out as if only one car, namely, that of Bal Thackeray, came to a sudden halt, this being the last car in the motorcade. This does not appear to be correct because in Khan's affidavit, there is a statement "... they returned to the cars and the convoy proceeded further" [P.W. 97/1, (8)/3212(4)]. Vichare has also stated that none of the vehicles in the motorcade bumped into one another when the motorcade came to a sudden halt (P.W. 101/2/3327). It also does not appear to be correct that the entire incident was over within "a matter of seconds". Vichare, when questioned by the Commission, has admitted that "the whole incident took about 10 minutes" (P.W. 101/2/3337). Dr. Mrs. Kazi has also deposed that the entire incident lasted about ten minutes (M.M.W. 1/32/3332).

85.98 According to Dr. Mrs. Kazi, Bal Thackeray arrived in a motorcade consisting of twenty-one cars, six trucks and three S.T. buses. She was near the rear gate of her compound and could see upto Kemburli Naka. At Kemburli Naka the persons, who had got down from the S.T. buses, joined the procession and the S.T. buses emptied out and proceeded ahead on the highway. The cars, the buses and the trucks were all decorated with Shiv Sena flags. Bal Thackeray was in a big car which was ninth in the motorcade. It stopped near the base of the mound and when it stopped, the entire motorcade, including the cars in front of Bal Thackeray's car, also came to a halt. Bal Thackeray got down accompanied by five or six persons and climbed up the mound. As Bal Thackeray got down from the car, the constables saluted him. Bal Thackeray did not run or rush up, but climbed the mound at the usual pace. None of them was carrying a coconut, but one person was already at the top with a basket in his hand which, she surmised, contained the coconut which was broken. Bal Thackeray and his companions climbed up the mound by the usual foot-track. There were policemen at the foot of the mound where the foot-track commenced and as Bal Thackeray got down from the car, they saluted him. After 'gural' was sprinkled, the coconut broken and the flag hoisted, Bal Thackeray made a short speech. They then went back to the cars. As Bal Thackeray got into the car, the constables again saluted him. She did not see where S.P., Khan was at that time, but she saw the S.D.P.O., "Dy. S.P., Khan and one Inspector and three Sub-Inspectors including Vichare standing crest-fallen with their gaze towards the ground, not daring to look up" (M.M.W. 1/32/3331-2).

85.99 Admittedly, there was a large procession accompanying Bal Thackeray and a number of persons had gathered at Gandhari Naka. The names of some of the prominent local persons who were there are set out in Vichare's said report (Ex. P 1165). There was also a press reporter present. Bal Thackeray held the centre of the stage and everyone's eyes were fixed on him and all attention was focussed on him. The fact that the motorcade halted at the place nearest the foot-track shows that the entire incident had been preplanned by the Shiv Sena leaders. Bal Thackeray knew that this incident would be widely

reported and would create a sensation. It is inconceivable that he and five or six other Shiv Sena leaders would run up the mound as if they were fugitives eluding the Police, sacrificing their dignity and ruining the dramatic impact of their action. The very fact that he addressed the people gathered on the road before breaking the coconut would show, not only that he was in no hurry, but that he wanted to heighten the dramatic effect of his actions. I, therefore, do not believe the case of the District Police Officer that Bal Thackeray rushed up the mound or that everything happened so suddenly that before the police officers present could gather their wits about them it was all over.

85.100. The question which arises is why nothing was done to prevent Bal Thackeray's entry into the disputed structure. There were fifty armed constables kept out of view behind the wall made by the tiles and bricks which were stacked near the Octroi Naka. These armed policemen, however, throughout remained hidden from view. The other policemen and police officers remained rooted to the spot. It is true that the senior police officers genuinely believed that Bal Thackeray had no intention to go upto the disputed structure when he entered Mahad, but would first have a discussion with the Muslim leaders. The large police force which was, however, posted there does show that they did contemplate the possibility of his acting contrary to the intelligence which they had received. It is also true that this was a purely Muslim locality and bandobast would have to be maintained there, lest there should be an untoward incident leading to a riot ; but this, in my opinion, could not have been the only reason for the amount of bandobast which was maintained at this place. The manner, however, in which the policemen were posted shows that the Police were reluctant to have a confrontation. No policemen were posted inside or outside the disputed structure (P.W. 97/7/3225). Though the mound can be climbed from several places, there is only one track by which people climbed the mound to go to the disputed structure. No policemen were posted at the foot of this track to prevent anyone from climbing it, though there were policemen posted round about it who were moving about (P.W. 97/40/3303-4). According to Khan, Vichare was to serve the order on Bal Thackeray under his instructions, but he did not have time to instruct Vichare to serve the order when Bal Thackeray started going up the mound. The explanation given by S.P., Khan why no policemen tried to stop Bal Thackeray from going up the mound was that the entry into the disputed structure was not prohibited and, as Khan has rightly stated, it was no use serving Bal Thackeray with the prohibitory order once he had entered the disputed structure (P.W. 97/47/3304). Vichare's evidence on this point, as on other points, makes unsatisfactory reading. He has deposed (P.W. 101/2/3337):—

“I had kept with me seven or eight copies of the prohibitory order Exhibit P 1122. Only I was having copies of that order. I was having the copies of this order with me because the S.P.'s

orders were that if the necessity arose I was to serve the order The order prohibited all persons from entering the disputed site. I would have run after anyone attempting to enter the disputed site and served him with the order. I did not run after Bal Thackeray and his companions when they got out of the car and went up the mound because I would have done so had the S.P. given me the orders to do so. Bal Thackeray's motorcade consisted of six or seven motor-cars and two S.T. buses. None of the vehicles in the motorcade bumped into one another when the motorcade came to a sudden halt taking us all by surprise. I did not ask the S.P. whether I should run after Bal Thackeray and his companions and serve them with the order. The whole incident took about ten minutes. During the entire incident none of the policemen or police officers did anything but just stand there

"I did not even ask the S.P. what steps we should take. Neither of us exchanged one word during this incident."

The Muslim witnesses have alleged that it appeared as if the Police were there to guard Bal Thackeray and not to prevent him from making good his challenge. One can hardly blame them for making a grievance of this. They had made representations to the highest authorities to make proper bandobast in view of the challenge thrown by Bal Thackeray that he would break a coconut at the disputed structure. When they saw such a large police personnel on bandobast duty at the time of his visit, their normal reaction would be that this bandobast was there to prevent Bal Thackeray for carrying out his threat. When they saw that none of the policemen or police officers did anything in this behalf, their reaction would be one of chagrin. The disputed structure is the first and the usual point of entry into Mahad while coming from Bombay. S.P., Khan has stated, "Short of banning his entry into Mahad, there was no other way of making Bal Thackeray enter Mahad by the other way, namely, the S.T. Stand Road, which would have been for persons coming from Bombay a much longer and inconvenient way." (P.W. 97/22/3234-5). What happened at the disputed structure was charged with the makings of a very serious communal riot. The fact that neither on that occasion nor later that evening a communal riot took place must be attributed to the conciliatory attitude adopted and the restraint exercised by the Muslims of Mahad. When a situation is so full of potentialities for a serious law and order situation, the inconvenience to Bal Thackeray and those who had accompanied him, who were the creators of the situation, should hardly have been the paramount consideration for the authorities. This incident would have never happened had the order under section 144, Cr. P.C. been promulgated. Intelligence, received from different sources, ought not in such situations to be blindly relied upon, nor the situation so allowed to go out of hand. An attempt to serve the order on Bal Thackeray as he was getting out of the car or going up the mound would in all probability have provoked a clash between the Police and the Shiv Sainiks. As this was a purely Muslim

locality, the Muslims would have been the real sufferers in such a clash because inevitably some Muslims would have got injured in the clash and Muslim properties would have been attacked and damaged. Earlier promulgation of the order under section 144, Cr.P.C. and its service on the Shiv Sainiks at Kemburli Naka would have, however, prevented this possibility. The road leading from Kemburli Naka to Mahad could have been blocked by placing a strong police force and police vans across it. This was precisely what was done on February 15, 1970 when Bal Thackeray commenced his Konkan tour and, as its opening act, was coming to Mahad to erect an iron flag-post at the disputed structure. On that occasion when he and his associates were served with a prohibitory order at Kemburli Naka not to enter the limits of Mahad town and they found the way to Mahad barred by police vans and S.R.P. men, they fulminated and abused, but ultimately went by the Bombay-Goa Highway towards their next place of halt. Similarly, when the Shiv Sainiks again came from Bombay to Mahad on February 22, 1970 to hold a public meeting, though the said prohibitory order was modified so as to confine its operation to the western part of the town, the Shiv Sainiks entered Mahad by the S.T. Stand Road. Neither on February 15, 1970 nor on February 22, 1970 when the Shiv Sena leaders from Bombay held a public meeting in Mahad, was there any physical confrontation between the Police and the Shiv Sainiks. Any possibility of a Shiv Sena-Muslim riot on January 17, 1970 could also have been obviated by prohibiting the entry into this Muslim locality and by blocking this locality off by placing a police force and a road block of police vehicles at the two points of entry to it from Mahad, namely, Salwad Naka and the junction of Sarekar Alli and Gandhari Lane, and at other convenient and strategic points.

85.101 My findings on this aspect of the case, therefore, are:—

- (1) It was an error of judgment not to have promulgated the order under section 144, Cr.P.C. earlier, but to leave its promulgation to the contingency of the talks in Dr. Deshmukh's house not proving fruitful.
- (2) The order was not promulgated and served on Bal Thackeray and his companions when they manifested their intention to go up the mound, not because there was no time to do so but because to have done so then would have provoked an instant riot and this position was realized by the police officers present on the spot.
- (3) The proper course of action would have been to promulgate an order prohibiting entry into the locality in which the disputed structure was situate and to make such an order effective by placing a strong police cordon and a road-block of police vehicles at the entrance of the road leading from Kemburli Naka to Mahad and also at Salwad Naka and at the junction of Sarekar Alli and Gandhari Lane and at other convenient and strategic points.

Whether there were any trucks in Bal Thackeray's motorcade ?

85.102 Neither the said report prepared under S. P. Khan's instructions (Ex. P 1111) nor the said report made by Vichare (Ex. P 1165) makes any mention of a truck in Bal Thackeray's motorcade. In his examination-in-chief Khan has stated that he learnt later that some trucks were also in the motorcade, but they were left at Kemburli Naka and that the police could not make any inquiry in the absence of information about the number of trucks which were there. He has further deposed that there is no police post or picket near Kemburli Naka (P.W. 97/7/3225). In cross-examination Khan stated that the trucks in Bal Thackeray's motorcade were left at Kemburli Naka and they did not enter Mahad even later and that as most of the time he was at the disputed property, he personally did not see these trucks. His attention was drawn to the news report in the 20th January 1970 issue of the Marathi daily the 'Navshakti' (Ex. P 1074) in which it was stated that Bal Thackeray accompanied by a caravan of eleven trucks went to the Azad Maidan to address a public meeting. Khan denied the correctness of the said report. He further stated that he learnt later that there were trucks in Bal Thackeray's motorcade and that he had made inquiries from various police stations on the way but none of them had noticed these trucks. He admitted that had they noticed these trucks, the Police were bound to stop them and prosecute the drivers thereof for carrying more than six persons in a goods truck without a permit, had no such permit been obtained (P.W. 97/41/3304-5).

85.103 According to almost all the non-official witnesses there were trucks in Bal Thackeray's motorcade and the Shiv Sainiks entered Mahad in such trucks, though the number of trucks mentioned by them differs. These witnesses are S. B. Savant [C.W. 29/1(14)/3252(12)], Ebrahim Chichkar (C.W. 30/1(5) 3270(3)], Shujauddin Kazi [C.W. 31/1(4)/3276(3)], Dr. Mrs. Kazi (M.M.W. 1/1(15)/3317(7), 26/3328] and Abdul Kadir Kablay (M.M.W. 3/1(8)/3385(4)).

85.104 The importance of this controversy lies in the fact that trucks normally used for carrying passengers on such occasions are public carriers of goods and such carriers are not entitled to carry passengers without a permit in that behalf. These trucks often carry passengers without obtaining a permit and if the Shiv Sainiks had come to Mahad in trucks, the question would arise whether the Police had prosecuted the truck drivers and the truck owners if no such permit had been obtained and if not, why they did not take such action.

85.105 A similar controversy arose before the Commission with respect to the Shiv Sena meeting held in Mahad on February 22, 1970 where too in the beginning the police witnesses sought to make out that no Shiv Sainiks had entered Mahad in trucks, but finally had to admit this fact in view of the persistence of Savant, but for whose efforts the documents and the facts relating thereto would not have come on the record.

85.106 Khan's explanation that no inquiry could be made in the absence of information about the exact number of trucks does not carry much conviction. Exactly how many trucks there were is immaterial. In any event, since these trucks must have come from various places at considerable distance from Mahad, one would have expected the police stations on the way to take down the numbers of these trucks and to note down how many such trucks were there. Obviously no such thing was done. The fact that the police witnesses are not telling the truth on this point is clearly established by the evidence of Taluka Executive Magistrate Joshi. Joshi has deposed that there were two trucks in Bal Thackeray's motorcade in addition to cars when the motorcade arrived at the disputed property and that these two trucks were at the end of the motorcade and when the motorcade moved forward after the flag was hoisted, the two trucks formed part of the motorcade and went into Mahad town, and that these two trucks were carrying Shiv Sainiks who had Shiv Sena flags in their hands (P.W. 102/7/3365).

Whether the constables saluted Bal Thackeray ?

85.107 It is alleged by Dr. Mrs. Kazi that both when Bal Thackeray got out of the car as also when he got back into it after returning from the disputed structure, the police constables who were near the car, saluted him (M.M.W. 1/32/3332). P.S.I., Vichare has denied this allegation (P.W. 101/2/3338). Though Vichare has not proved to be a truthful witness, the said allegation of Dr. Mrs. Kazi cannot be accepted for four reasons. Firstly, had this been a fact, one would expect it to find place in the affidavits and evidence of other Muslim witnesses. None of the Muslim witnesses has deposed about it. Secondly, there is no such allegation in Dr. Mrs. Kazi's affidavit, nor is there any such allegation in any of the affidavits filed by other Muslims including the affidavits of those Muslims who have not been examined as witnesses, nor has Dr. Mrs. Kazi made any such allegation in her article published in the 17th February 1970 issue of the Urdu daily the 'Aaz' and in the 22nd February 1970 issue of the Urdu fortnightly the 'Rehnuma-e-Millad' (Ex. MM 1), nor in her article headed "Repression by Maharashtra Government in Mahad affair" published in the 24th April 1970 issue of the 'Maharashtra Muslim' (Ex. No. 75), both of which contain a graphic description of what happened at the disputed structure on January 17, 1970. Thirdly, such a fact would have been proudly mentioned in the article of Bal Thackeray's Mahad visit which appeared in the 25th January 1970 issue of the Shiv Sena weekly the 'Marmik' (Ex. G 269). The said article, however, does not make any such mention. Fourthly, neither convention nor regulations sanction constables saluting when they are in a body and a superior officer is in command. Rule 415(2)(c)(ii) of the Bombay Police Manual, 1959, Vol. I, provides as follows :—

“When in a body, only the officer in command will salute, the remainder obeying his orders, e.g., to come to attention or to turn eyes right or left, as the case may be.”

Whether anti-Muslim slogans were shouted ?

85.108 The Shiv Sainiks accompanying Bal Thackeray were admittedly shouting slogans. Slogans were shouted when Bal Thackeray went up to the mound and after he got down from it. According to the District Police Officers, the slogans which were shouted were, "Jai Shivaji", "Jai Chhatrapati" and such innocuous slogans (P.W. 97/8/3227). Taluka Executive Magistrate Joshi has corroborated this and has further stated that the Shiv Sainiks were intermittently shouting slogans and that not only the persons in the motorcade but those standing on the road were shouting slogans. He further deposed that the Shiv Sainiks were intermittently shouting slogans in the town from 5 p.m. to 8 p.m. He has, however, stated that he did not hear any anti-Muslim slogans being shouted (P.W. 102/7/3365). Vichare has also admitted that there was a lot of slogan-shouting by the Shiv Sainiks at the time of the public meeting that evening (P.W. 101/15/3348). According to the Muslim witnesses, the slogans which were shouted were anti-Muslim and abusive of the Muslims. Dr. Mrs. Kazi has mentioned three such slogans. Amongst these were slogans such as "Salaam Alekum, Maro Saleku, Maro Landeku" and "Bajao Pungi, Hatao Lungi" (M.M.W. 1/1(15)/3317(7), 26/3328). Bal Thackeray had come to Mahad to project his image as a champion of the Hindus and a protector of their religion. He had come to assert the right, which, according to him, the Hindus had to break a coconut at the disputed structure, and the exercise of which, he claimed in his Chowpatty speech, had been obstructed by the Muslims. In that speech he had dared the Muslims to obstruct him when he tried to break a coconut. In the eyes of the Hindus who were present there he had made good his challenge and vindicated this right of the Hindus against the Muslims. It is not possible to believe that at such a time abusive, anti-Muslim slogans were not shouted. It is pertinent to remember that even according to the Police, at least one anti-Muslim poster had already appeared in the town. I, therefore, accept the evidence of the Muslim witnesses on this point.

The tea at Dr. Mehta's house

85.109 In no time the news of the hoisting of the flag by Bal Thackeray was all over the town and Savant, who was then at his house, heard about it within fifteen minutes of the incident (C.W. 29/1(14)/3252(13), 39/3295].

85.110 After Bal Thackeray got back into the car, the motorcade moved on and entered Mahad. Bal Thackeray did not go to Dr. Deshmukh's place (P.W. 97/1(9)/3212(4)]. Instead the Shiv Sena leaders went to Dr. Baburao Mehta's place and partook of refreshments there. In an attempt to make out that he did not have any connection with the Shiv Sena, Dr. Baburao Mehta at first stated that the Shiv Sena leaders had come to his place uninvited along with his son Arun Mehta and as they were his son's friends, he had to show courtesy to them. Ultimately he admitted that he had previous knowledge of their

coming to his house as his son had written to him about the visit of the Shiv Sena leaders to Mahad on January 17, 1970 (C.W. 29/1(8)/3952(6), 5/3955).

The Shiv Sena Meeting

85.111 After refreshing themselves at Dr. Baburao Mehta's place the Shiv Sena leaders went in the evening to Azad Maidan for a public meeting which was arranged by the Mahad Branch of the Shiv Sena. The meeting lasted from about 6-20 p.m. to 8-45 p.m. and about 5,000 people are estimated to have attended it. Exhibit G 258 is a translation of the report of this meeting by P. G. Karnatak, Short-hand Reporter of the State Intelligence. After garlanding the bust of Shivaji which was kept on the platform, Bal Thackeray broke a coconut to mark the inauguration of the Mahad Branch of the Shiv Sena. Madhav Bhide, the Shakhapramukh of the Panvel Branch of the Shiv Sena, welcomed the guest of honour and the audience and said that the Shiv Sena did not know how to retreat and now that it had made its appearance in Konkan it would try to do what the others could not. The other speakers were Arun Mehta, the then Secretary, Bharatiya Kamgar Sena, Bombay, Datta Salvi, Pramod Navalkar, Manohar Joshi and Bal Thackeray. Most of the speeches were political in theme. Two of the speakers, Manohar Joshi and Bal Thackeray referred to the disputed structure. Manohar Joshi in the course of his speech said :—

“Hindus have a right on Goddess Mahikavati in Mahad. What were the Jan Sanghites doing so far? If the Muslims lay their claim on the temple, why do they fear to come forward? Do not spread misunderstanding against the Shiv Sena. Be proud of being born in Hindu community. Shri Balasaheb Thackeray performed the Puja ceremony at the Durgadi Fort in Kalyan along with his wife although section 144 was in force there. He also renovated the Datta Temple in Thana. We will not allow it to be acquired under the Town Planning. (Applause). We have no animus against the Muslims. Nationalist Muslims are our brethren.”

Bal Thackeray began his speech by saying :—

“Mahad is a historical place. We have entered it now. The first thing that we did after coming here was to establish our right on the Mahikavati Temple.”

In the course of his speech he also said :—

“History tells us that religion is buried whenever revolution takes place. We must learn this very lesson from the Ahmedabad riots. Hindus woke up only when riots flared up there and a temple was devastated. I would like to ask my Muslim brethren to say whether they are Indians or not. Those born in India are Indians. You feed yourselves in this nation. Are you not then going to be loyal to this country? (Applause). Even if section 144 had been promulgated in the Mahikavati area. I would have violated it along with my colleagues. Minority, majority, it is all a fabrication.”

The halt at Mahad and the visit to Raigad Fort

85.112 That night the Shiv Sena leaders slept at Dr. Baburao Mehta's place (C.W. 46/18/3963). Bal Thackeray did not attend the C.K.P. Convention (Ex. P 1111). That night the Police were patrolling in the town till about 4 a.m. (P.W. 97/8/3227). The next morning Bal Thackeray and those who had accompanied him went to Raigad Fort. On the way they stopped at the disputed structure and made obeisance and satisfied themselves that the flag was in its place. They returned to Mahad in the evening and then left for Bombay (Exs. P 1111 and P 1165). P.S.I., Vichare, however, sought to make out in his evidence that neither when he went to Raigad nor when he returned to Mahad from Raigad nor on his way to Bombay from Mahad in the evening did Bal Thackeray go past the disputed structure. When faced with the statement in his report dated January 19, 1970 (Ex. P 1165), namely, "The next morning at 6 a.m. he left Mahad and went to Raigad Fort. On the way he made obeisance to Mahikavati Mandir and then proceeded further", the only explanation which he could give was that while giving evidence he had forgotten the fact that Bal Thackeray had gone to the disputed structure and made obeisance while going to Raigad (P.W. 101/23/3357).

Conclusions

85.113 While discussing under various heads the questions which have arisen for consideration in this chapter I have set out in detail my conclusions thereon. It will be convenient now to summarize the facts found and the conclusions reached by me. They are :—

- (1) The speech made by Bal Thackeray at Chowpatty, Bombay, on November 2, 1969 was a communal speech. It was intended and calculated to make a communal issue of the disputed structure, out of motives of political gain, namely, to obtain a foothold in Konkan in general and in Mahad and its adjoining areas in particular.
- (2) The said speech succeeded in its objective and achieved the effect it was intended to bring about.
- (3) The publication of the reports of the said speech in newspapers marked the beginning of communal tension in Mahad. In the light of what had happened at the Durgadi Fort, Kalyan, the publication of the reports of the said speech in newspapers and the announcements from time to time of Bal Thackeray's visit to Mahad caused on the one hand a wave of religious emotionalism to sweep over the Hindus of Mahad, and on the other, filled the Muslims with apprehension and fear.
- (4) The events which tangibly reflected the aforesaid reaction to Bal Thackeray's speech, the publication of its reports in newspapers and the repeated announcements of his visit to Mahad were :—

(i) the formation of a branch of the Shiv Sena in Mahad ;

- (ii) the appearance of some anti-Muslim posters in Mahad ;
 - (iii) the bringing together on a common communal platform of a number of Hindu leaders belonging to different shades of political opinion, such as the P.S.P., the Jan Sangh and the Congress ; as is exemplified by Anant Mahadeo Shah of the P.S.P. presiding over the first Shiv Sena meeting held at Mahad on December 11, 1969, Madhukar Sitaram Pawar of the P.S.P. (deponent of affidavit No. 393) becoming the Mahad Shahar Shakhapramukh and Dagdu Babu Parte of the Jan Sangh (deponent of affidavit No. 392) the Mahad Taluka Shakhapramukh ;
 - (iv) the publication of articles on the disputed structure in newspapers and periodicals ;
 - (v) the Shiv Sena demonstration in Mahad on the night of December 21, 1969 ;
 - (vi) the sending away of their families by some Muslims in view of the approaching visit of Bal Thackeray to Mahad on January 17, 1970 ;
 - (vii) the insuring of their properties by some Hindus and Muslims as a safety measure against any riot which might take place at the time of or in the wake of Bal Thackeray's visit ;
 - (viii) the telegraphic representation made by the Secretary, the Jamiet-ul-Ulema, Maharashtra, on December 17, 1969 and the written representation dated December 19, 1969 to the Chief Minister and others by twenty-three Muslims from Mahad ; and
 - (ix) the visit paid by Dr. Mrs. Kazi and Babu Mopla to the S.P., Kolaba, at Alibag on January 13, 1970 to inquire about the bandobast that was going to be made for Bal Thackeray's visit to Mahad.
- (5) The incident which took place on the night of December 11, 1969 between some Muslim students and some Hindu students of Ambedkar College was not a communal incident. It would have turned into a communal incident but for the restraint shown by the panchas of the Muslim Jamaat of Rajewadi Village and the intervention of the Secretary of the District Congress Committee and other Congress workers.
- (6) Some of the Muslim leaders from Mahad had an interview with Bal Thackeray and some other Shiv Sena leaders in connection with Bal Thackeray's forthcoming visit to Mahad on January 17, 1970 and it was arranged at this meeting that instead of visiting the disputed structure Bal Thackeray would first go to Dr. Ahmedkhan A. Deshmukh's house, discuss the matter with the local Muslim leaders and look at any documentary evidence which they might have in their possession.

- (7) The order dated January 16, 1970 under section 144, Cr. P.C. issued by the Taluka Executive Magistrate, Mahad, prohibiting entry into the disputed property was not promulgated.
- (8) The said order was not promulgated because of (a) the implicit reliance placed by the District and Police authorities on the intelligence received by the Police from different sources that Bal Thackeray was not going to visit the disputed structure but was first going to Dr. Deshmukh's house for a discussion with the Muslim leaders, and (b) a desire on the part of the Police not to provoke an open clash with the Shiv Sainiks which could have resulted in violent riots leading to loss of life and property.
- (9) It was an error of judgment not to have promulgated the order under section 144, Cr. P.C. Had an order under section 144, Cr. P.C. been issued and promulgated banning the entry into the disputed property from Kemburli Naka on the western side and from Pimpalpar Naka on the eastern side as was done on February 22, 1970, the communal history of Mahad would very probably have taken a different shape.
- (10) It is not possible to give a definite finding on how S. B. Savant obtained two typed copies of the said order under section 144, Cr. P.C. bearing the signature and seal of the Taluka Executive Magistrate, Mahad. These copies were obtained either from the Mahad Town Police Station or from the office of the Taluka Executive Magistrate, Mahad. In either event the manner in which they were obtained was irregular and improper and showed a lack of responsibility on the part of those concerned.
- (11) The going upto the disputed structure by Bal Thackeray and his companions and the breaking of a coconut, the sprinkling of 'gulal' and the hoisting of a flag on the disputed structure did not take place with such suddenness as was sought to be made out by the Executive Magistrates and the District Police Officers. In view of the strong police bandobast it would have been possible for the Police to have prevented Bal Thackeray and his companions from going upto the disputed structure. It would have been equally possible for the Police to have served the said order under section 144, Cr. P.C. upon them. The said order was, however, not served upon them and they were not prevented from going upto the disputed structure, not because things happened too quickly to enable this to be done, but because the Police desired to avoid provoking a clash between the Shiv Sainiks and the Police, which would have led to a serious riot and in which the Muslims of the locality in all likelihood would have suffered the most both in life and property.
- (12) Some trucks carrying Shiv Sainiks formed part of Bal Thackeray's motorcade on January 17, 1970 and entered Mahad.

No attempt was made either at any place on the road or in Mahad to check the permits of these trucks to verify whether the owners of these trucks had obtained the necessary permits for carrying passengers in excess of the prescribed number or to prevent them from proceeding further if such permits were not obtained nor was any attempt made to take down the registration numbers of those trucks.

- (13) Some of the slogans shouted on January 17, 1970 both on the road outside the disputed property and in the town were abusive and anti-Muslim.
- (14) None of the police constables, who were present for bandobast near the disputed property on January 17, 1970, at any time saluted Bal Thackeray.
- (15) While he was at Mahad, Bal Thackeray did not go to Dr. Deshmukh's house for a discussion with the Muslim leaders, nor did he at any time meet any Muslim leaders but instead, as pre-arranged, he went to Dr. Baburao Mehta's house, had tea there, thereafter addressed a public meeting in the evening, and stayed the night at Dr. Mehta's house.

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CHAPTER 86

THE SHIV SENA AND THE DISPUTED STRUCTURE — THE SECOND PHASE

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CHAPTER 86

THE SHIV SENA AND THE DISPUTED STRUCTURE— THE SECOND PHASE

Police activities after Bal Thackeray's visit

86.1 On January 17, 1970, D.M., Savanur was at Mangaon. S.P., Khan immediately informed him in the evening about the incident at the disputed structure. Savanur thereupon left for Mahad and arrived there at about 6 p.m. Khan also sent a wireless message to the Home Police Inspector, Thana, and also spoke to him on the telephoe directing him to inform the D.I.G. (B.R.) who was that day camping at Tarapore in connection with the Prime Minister's visit and to request him to come to Mahad immediately. He also directed the Home Police Inspector to contact the Asst. I.G.P.(I) and request him to send one company of S.R.P. Force to Mahad immediately. This company reached Mahad during the night of January 17, 1970 and when the situation eased, it was sent back. Gokhale immediately left for Mahad and arrived there at about 4 a.m. on January 18, 1970 and held consultations with Savanur and Khan (P.W. 97/1(9)/3212(4), 8/3227, P.W. 98/1(13)/3243(4) ; G.W. 4/1(8)/1190(3)].

The Muslim attitude to Bal Thackeray's visit

86.2 According to the Executive Magistrates and District Police Officers, in the morning of January 18, 1970 S. B. Savant accompanied by some Muslim leaders went to the Inspection Bungalow and woke up D.M., Savanur, D.I.G. (B.R.), Gokhale and S.P., Khan. The Muslim leaders and Savant told the D.M. and the police officers not to take action against Bal Thackeray in the interest of communal peace and harmony. These officers thereupon asked the Muslim leaders to put down what they had to say in the form of a statement on affirmation. Accordingly the Muslim leaders gave a writing dated January 18, 1970 (Ex. P 1069) affirmed before Taluka Executive Magistrate Joshi [P.W. 97/1(9)/3212(6), 8/3227, P.W. 98/1(13)/3243(4)]. The said writing stated that Bal Thackeray, Arun Mehta, Datta Salvi, Manohar Joshi, Pramod Navalkar and others had entered the Jumma Mosque and the old 'Kabrastan' near Gandhari Naka and had broken a coconut and planted a saffron flag on one of the dilapidated walls and had thrown 'gural' on the graves. After setting out briefly the speech made by Bal Thackeray, the said writing continued—

“ Though this act of theirs is illegal, in order to maintain public peace and not to allow any strained relations between the Hindu and Muslim communities we say that no action should be taken against them.”

The said writing concluded by stating, "We have given this statement in writing willingly and on behalf of our community as decided in our Jamaat." It was signed by Hasanmiya Gulam Mohiddin Pansare as Mutavali of the Muslim Jamaat, Abdul Kadir Kablay (M.M.W. 3) as a Trustee of the Mahad Jumma Masjid, Sujauddin Kamaluddin Kazi (C.W. 31), I. K. Kapadi and Dr. Ahmedkhan Deshmukh (C.W. 32).

86.3 The case of the Muslim parties is that the Muslim leaders were made to sign the said writing by the officers. The Muslim witnesses, who have deposed to this case are Dr. Mrs. Kazi, who was not present at that time, and Abdul Kadir Kablay. Kablay has stated in his affidavit that they signed the said statement as the police officers told them that the tension would increase if any complaint were filed by the Muslims. According to him, he and the other Muslim leaders were sent for to the Inspection Bungalow and were taken there in a police van. At that time the D.M., the S.P., the Mamlatdar, some other officers and S. B. Savant were present. The officers inquired whether the Muslims had any complaint to make about what had happened on January 17, 1970. The Muslim leaders replied in the affirmative and said that the Government should file the prosecution. The officers told them that Bal Thackeray would be thereafter coming frequently to Mahad and any such prosecution might lead to riots and would result in tension between the Hindus and the Muslims and it would not be possible for the Police to make bandobast each time and the Muslims should not, therefore, press for action by the Police and should give a writing to this effect. The Muslim leaders wanted time to consult the Jamaat, but they were not given any such time and, therefore, they put their signatures on the said writing [M.M.W. 3/1(9)/3385(5), 20/3395-6]. Neither Savant nor Sujauddin Kazi has dealt with this aspect of the case in their affidavits nor have they been asked any questions about it. Dr. Deshmukh has stated that he did not go to the Inspection Bungalow of his own accord, but the police van had come to his place to fetch him. When he reached the Inspection Bungalow, the other signatories to the said writing and some officers were already there. He was given a writing to sign, which had already been written out. He read it. As he did not like any communal disharmony, he signed it. He did not know whether the others had signed it voluntarily or were persuaded or made to sign it (C.W. 32/10/3416-7).

86.4 According to the police officers, this writing was voluntarily given by the Muslims. According to Khan, the officers did not like the idea of the Muslim leaders giving such a writing as the Police wanted to launch prosecutions. He has further stated that the officers asked the Muslim leaders to give the writing in the form of an affirmed statement, lest subsequently the Muslim leaders turn round and blame the Police (P.W. 97/19/3233, 8/3227).

86.5 In support of their case, the Muslims have relied upon a report (Ex. G 252) dated February 23, 1970 made by Inspector R. S. Salvi of the State Intelligence (P.W. 107). As Bal Thackeray was to address

a public meeting at Mahad on February 22, 1970 in defiance of an order under section 144, Cr. P.C. Salvi was directed on February 21, 1970 by the D.I.G. (Int.) to proceed to Mahad and make a special report. Salvi went to Mahad on February 22, 1970 by an S.T. bus and left Mahad for Bombay at about 4 a.m. on February 23, 1970. In the said report it is stated:—

“It is learnt that on the occasion when Shri Thackeray broke the coconut and planted the flag, the D.M., Kolaba, and the S.P., Kolaba, had called the Muslim leaders and asked them whether they wanted to lodge any complaint or whether they wanted the whole thing filed. They were told that in case they complained about their religious feelings being hurt, they would continue to be troubled, that it would not always be possible to afford protection since mustering of enough policemen would always be a problem.”

After reaching Mahad on February 22, 1970 Salvi moved about in the town. He went to Salwad Naka. He saw some Muslim leaders sitting there. He started questioning them because some of them were known to him and obtained from them the aforesaid information. He could recollect in the witness-box the names of only two of them, namely, Pansare and Chichkar. He did not go that day either to the police station or to the Inspection Bungalow. The only officers with whom he talked were Sub-Inspectors Haridas and Hundekari from the State Intelligence. He, however, did not talk with them about the meeting between the D.M. and the S.P. and the local Muslim leaders on January 18, 1970. He did not verify with the D.M. or the S.P. the information which he had received from the Muslim leaders, though they were in Mahad, because according to him, they were too busy on that day (P.W. 107/2-3/3444-7).

86.6 In this somewhat unsatisfactory state of evidence, it is difficult to ascertain the true facts with respect to the interview which the D.M. and the officers had with the Muslim leaders. It is obvious that neither side is telling the whole truth. It is as difficult to believe that the Muslim leaders would have gone in a group so early in the morning to give voluntarily the said writing as it is to believe that the officers sent for them in a group to bring pressure upon them. In the S.P.'s said report dated January 20, 1970 (Ex. P 1111) it is stated:—

“On making inquiries as to what was the reaction amongst the members of the Muslim community about breaking of the coconut in the Mahikavati Mandir and planting of the flag, it was learnt that they had no objection as regards that. They say, ‘Shri Thackeray will stay in Mahad for a day but the relations between the two communities will continue day in and day out for ever. Because of breaking of coconut or because of any other act, the site which stands in the name of our community will not be entered or has not been entered in the name of any other community. In these circumstances instead of augmenting the dispute without any reason the Muslim community will, by making an application to the Government in respect of the said site, request the Government for

appointing an Inquiry Commission and it will accept the decision that will be given by the Commission after making the inquiry.' The Muslim leaders are of the view that the Government should take the aforesaid site in its possession and should erect a memorial etc."

The above quoted extract indicates that it is the officers who had sent for the local Muslim leaders to ascertain what the reaction of the Muslims was and what attitude they wanted to adopt. By reason of what transpired at the disputed structure the previous evening, the officers must have felt very foolish and greatly perturbed. They must have realized that it was an error on their part and on the part of the other superior officers not to have taken the decision to promulgate the order under section 144, Cr. P.C., but to make its promulgation contingent upon the result of the meeting in Dr. Deshmukh's house. They must have been greatly perturbed about the repercussions likely to take place. This is shown by Khan's immediate and urgent messages to the D.M. and the D.I.G. (B.R.) and his asking for a company of S.R.P. Force. That night the paramount anxiety of the officers must have been not to let the situation aggravate. The Muslims too must have been left dazed by what had happened. They must have expected that in view of the strong police bandobast, Bal Thackeray would not make good his threat. That night the local Muslim leaders could not have gone straight to bed as if it was just any ordinary night. There must have been meetings and discussions amongst them and, as happens at these meetings and discussions, some of them must have counselled restraint while some others must have waxed indignant. On January 17, 1970, S. B. Savant was in Mahad, but he did not leave his house the whole of that day (C.W. 29/21/3262). Some Muslim leaders, including Sujauddin Kazi and Ebrahim Chichkar who were his followers, must have sought his advice. The Muslim leaders must have ultimately realized that irrespective of whether they were in the right or not, a safer and more prudent course for them to follow would be to take a restrained and conciliatory attitude. After all, they were in a small minority in Mahad and in any disturbances which might take place, they would suffer much more in life and property. Some such discussion must have also taken place between them and the police officers. In this connection it is pertinent to remember that at each stage the local Muslim leaders, or at least the majority of them, always adopted a restrained and conciliatory attitude and did not seek to aggravate the situation by insisting upon their strict legal rights. In none of the subsequent representations made by the Muslims is there any allegation that the said writing was obtained by pressure. On January 24, 1970, twenty-six Muslim members of the Muslim Jamaat, Mahad, made a written representation to the Chief Minister (Ex. P 1072). While referring to the incident of January 17, 1970 and the Public meeting which took place later that evening, they have stated:—

"The Muslim community showed a great restraint at the time of the said meeting when the Shiv Sena Chief had broken the coco-

nut at the Mosque, put his party's flag there and everything passed peacefully."

After referring to certain incidents which took place on January 23, 1970, the said representation concluded by stating:—

"The Muslim community on its part have made every effort to maintain communal harmony in the city and they are also prepared to discuss the above dispute with any authority or persons to avoid communal tension and disturbance."

86.7 For the reasons stated above, it is not possible to believe that the said writing (Ex. P 1069) was signed by the Muslim leaders by reason of the pressure brought upon them by the officers and I hold that it was signed by them voluntarily after discussions with the officers.

The removal and re-hoisting of the flag

86.8 On January 20, 1970 at about 5 a.m. it was found that the flag hoisted by Bal Thackeray on the disputed structure was not in its place and had obviously been removed. The Police were unable to find out who had removed the said flag. The same night at about 9-15 p.m. while the roll-call was being taken at the Mahad Town Police Station, information was received that some persons were going towards the disputed property with a flag. P.S.I., Vichare along with some policemen went to the spot and found three persons climbing down the mound. Their names were Anant *alias* Anna Ramchandra Pawar, Shantaram Mahadeo Bamne and Ashok Kumar Nagarkar, all of them belonging to the Shiv Sena. Vichare also saw that a flag had been re-hoisted in the place where Bal Thackeray had originally hoisted it. A crowd had started gathering at the spot. Vichare took the said three persons to the police station (P.W. 97/12/3230).

86.9 It is the case of the Muslim parties that Anna Pawar, followed by some Shiv Sena workers, had gone to the disputed structure, carrying a Shiv Sena flag in his hand, and on his way there while passing through the Muslim locality, had openly declared that he was going to hoist the flag on the disputed structure. In order to go from the town to the disputed structure one has to pass through the Muslim locality. It, therefore, stands to reason that while passing through this locality Anna Pawar, and those who had accompanied him, must not have made any secret of their intention. This is also apparent from the fact that the information received at the police station was that some persons were going towards the disputed structure with a flag.

86.10 After the said three persons were taken to the Mahad Town Police Station, they were released (P.W. 97/12/3230). The reason why they were released is a matter of controversy between the District Police Officers and the Muslim parties. According to P.S.I., Vichare, after warning them not to go near the disputed property he released them (P.W. 97/12/3230). According to the Muslim parties, they were released because a mob of Shiv Sena workers came to the police station and agitated for their release.

86.11 P.S.I., Vichare has made a report dated January 21, 1970 (Ex. P 1097). In the said report he has stated that after it was found that the flag hoisted by Bal Thackeray was missing, there was a discussion in the town whether it had been removed by someone or had been blown away by the wind. The report then describes as follows what happened when Vichare and the constables went to the disputed property:—

“There we found that Anna Pawar *alias* Anant Ramchandra Pawar, residing at Mahad was getting down from the temple after planting the flag. Two other persons, namely, Shantaram Mahadeo Bamne and Ashok Kumar Nagarkar were with him. Then as crowds started collecting and as it was likely that Anna Pawar being a ‘goonda’ would commit some untoward act, we brought him and the above-mentioned persons who were with him to the police station. After they were brought, several children and Shiv Sainiks Anant Mahadeo Shah and Dagadu Babu Parte came to the police station to see what the matter was. Finding that we had let them off, all of them passed through the Bazar Peth at Mahad shouting slogans like ‘March to Azad Maidan’, ‘Shiv Sena Zindabad’, ‘Bal Thackeray Zindabad’ and ‘Anna Pawar Zindabad’ and there Anant Shah congratulated Anna Pawar for having replanted the flag and said, “The blood of the Marathas is surging up”. Then Dagadu Balu Parte stated, “The Muslims are bound to be prepared now. You should not go there alone. We also must be prepared now.” Then Ashok Deshpande stated, “We shall send two persons to Bombay and inform him about what has happened. We have accepted Shri Thackeray as a leader and we shall carry out our further programme in accordance with his directions.” Then Ramesh Salvidkar shouted the slogans ‘Shiv Sena Zindabad’ and ‘Bal Thackeray Zindabad’ and the persons who were there went away to their respective houses. About 200 big boys had collected there.”

The evidence of P.S.I., Vichare on this point is as unsatisfactory as on the other points. He has changed his story from time to time and has prevaricated throughout. He has deposed (P.W. -101/7/3341-2, 18/3353-4):—

“On January 20, 1970 when, on receiving information that some people had gone to the disputed site for planting a flag, I went to the spot. I found that a flag had already been planted in place of the one which was found removed earlier that day. I interrogated Anna *alias* Anant Ramchandra Pawar, Shantaram Mahadeo Bamne and Ashok Kumar Nagarkar whom I saw coming down the disputed site. They told me that they had gone to the disputed site but had not planted the flag. I did not take down their statements in writing. These three told me that they had gone to the disputed site to look at the flag which someone had planted there. I learnt afterwards that Anna Pawar was congratulated for planting the flag. I tried to find out who had planted the flag but could not get the information. I did not record their statements in writing when I took them to

the police station on January 20, 1970 because no one was willing to give a complaint and had I recorded their statements, the people would have said that because of the Police the situation had worsened. The situation would have worsened because the Hindus would have become angry. I am not afraid to discharge my duties just because somebody might thereby become annoyed or angry. It is not true that I had arrested Anna Pawar and taken him to the police station. It is not true that a Hindu mob came there agitating and therefore I released Anna Pawar. No mob had come there but only five or six persons had come there to inquire what had happened. Among them was Dagdu Parte. It is not true that there was a panic amongst the Muslims that night

“After Anant Pawar and his companions denied that they had planted the flag on January 20, 1970, I did not make any further inquiry as to who had planted the flag. I now say that I asked the Muslims but they could not tell me who had planted the flag. I asked the Muslims that very night and the next morning. I contacted Hasanmiya Pansare and Abdul Kadir Kable the next day after the incident and on January 30, 1970 they gave a signed statement that they did not want any prosecution (Exhibits P 1070 and P 1071). I got these statements to have a written record that no Muslim was willing to give a complaint.”

Later he improved upon his story and stated that besides Hasan Miya Pansare and Abdul Kadir Kablay, he had also made inquiries from one or two other Muslims, but when asked to give their names he was unable to do so (P.W. 101/24/3358).

86.12 From January 18, 1970 a twenty-four-hour police patrol consisting of one head constable and three constables was provided to patrol from Bander Naka upto the disputed property. The duty of the said police patrol was, in the words of Vichare, “to see that no disturbance took place at or near the disputed place” and that “they were not to allow any person to remove the flag planted by Bal Thackeray on January 17, 1970 or to plant another flag”. Vichare at first stated that he did not inquire from any of these constables as to who had removed the said flag. Later he changed his answer and deposed that he had inquired from the head constable and the three constables on patrol duty at Bandar Naka as to who had rehoisted the flag, but they told him that they had gone to the Octroi Naka for taking their meals and did not, therefore, see who had rehoisted it. Vichare admitted that he did not hold any inquiry nor take any disciplinary action against these constables for leaving their post of duty together to take their meals. He further deposed that he had also inquired from the head constable and the three constables on fixed point duty at Salwad Naka about the persons who had passed through Salwad Naka carrying a flag and they had replied that they had seen Anna Pawar pass by, but he was not carrying a flag (P.W. 101/21/3356-7).

86.13 It may also be mentioned that though there is an entry in the station-diary of the Mahad Town Police Station about the re-

hoisting of the flag (Ex. P 1164), there is no entry in it about the removal of the flag (P.W. 101/19-20/3354-5).

86.14 The incident of the re-hoisting of the flag and the subsequent visit of the local Shiv Sena leaders to Bal Thackeray was referred to by the Shiv Sena leader, Arun Mehta, in the course of his speech at the Shiv Sena public meeting held at Azad Maidan, Mahad, on February 22, 1970 (Ex. P 1084). He said:—

“Afterwards somebody removed that flag but one young man hoisted a Bhagwa Flag again there with courage. We are proud of the courage shown by that man. And this act will show that brave persons are still living in Maharashtra. When that youth came to Bombay to see Balasaheb Thackeray, Balasaheb embraced him and patted him for his act and said, ‘I have seen the atmosphere of the town, some historical incidents took place.’”

86.15 The above evidence conclusively establishes certain facts. By reason of Bal Thackeray's visit to Mahad on January 17, 1970 and his actions that evening, the Shiv Sena gained considerable ground in Mahad. The local Shiv Sena leaders were anxious to keep themselves and the Shiv Sena in the limelight at every opportunity and to keep the tension mounting. The persons who re-hoisted the flag, did so openly. There were crowds at that time and because of this, Vichare took Anna Pawar, Shantaram Bamne and Ashok Nagarkar to the police station with him. Dagađu Parte, Shakhapramukh of the Mahad Town Branch of the Shiv Sena, and Anand Shah, the Shakhapramukh of the Mahad Town Branch of the Shiv Sena, immediately came to the police station to see what the matter was. A crowd of Shiv Sainiks and other Hindus collected outside the police station. It is obvious that with this crowd outside the police station no Muslim could have come forward to lodge a complaint. Vichare did not even record the statements of these three persons because it might have infuriated the Hindu crowd. He also did not make any inquiry in the matter except that, when it occurred to him later that he should keep the record straight, he approached two of the Muslim leaders, Hasanmiya Pansare and Abdul Kadir Kablay, and asked them to give in writing that there should be no prosecution. I believe Vichare when he says that after Anna Pawar and his companions had denied that they had re-hoisted the flag, he did not make any further inquiry as to who had done so and disbelieve him when he seeks to change that answer subsequently to say that he had made inquiries of the Muslims that very night and the next morning and when he further improves upon his story to say that he had made inquiries from the constables on fixed point duty at Salwad Naka and at Bunder Naka. It is clear that the only action which he took thereafter was to contact Hasanmiya Pansare and Abdul Kadir Kablay and persuade them to give their statements (Exs. P 1070 and P 1071) to the effect that they did not wish to make any complaint against Anna Pawar and did not want any prosecution to be launched. These statements (Exs. P 1070 and P 1071) show that the Muslim local leaders were not in any way desirous of doing anything which might

aggravate the situation or which would be taken as an excuse for aggravating the situation.

The failure to prosecute Bal Thackeray

86.16 In view of the removal and rehoisting of the flag and the incidents that happened on the night of January 20, 1970, the Police decided that some action should be taken against Bal Thackeray and his associates for what had happened at the disputed structure on January 17, 1970. The evidence on this point is that of S.P., Khan (P.W. 97/8/3227-8, 34/3241), D.M., Savanur [P.W. 9801(15)/3243(5), 10/3249], C.P.I., Saluke [P.W. 105/1(4)/3418(2), 5/3420-1] and Dy. S.P., Patankar [G.W. 11/1(13)/3398(6), 27/3406-7]. Accordingly, at 5 p.m. on January 21, 1970 and F.I.R. (Ex. P 1101) was lodged by P.S.I., Vichare, which was registered as P.C.R. No. 8/1970. The names of the accused mentioned in the said F.I.R. were Bal Thackeray, Datta Salvi, Pramod Navalkar and Manohar Joshi. The said F.I.R. stated that the disputed property was in the possession of the Muslim community and that on January 17, 1970 the said four accused, along with some others, formed an unlawful assembly, entered the disputed property unauthorisedly and with the intention of insulting Islam, broke a coconut after going into the disputed structure, making a speech and planting a flag there, and that they had thereby committed offences under sections 143, 153A, 295, 295A and 477, I.P.C. Oddly enough, the disputed structure was referred to in the said F.I.R. as "the Mahikavati Temple". Further, there was no mention in the said F.I.R. of the sprinkling of 'gular' or of 'gular' falling on the Muslim tombs.

86.17 On January 22, 1970 C.P.I., Saluke took charge of the said case. He completed the collection of evidence on June 10, 1970 and referred the matter to the Senior Police Prosecutor for his opinion. In the course of the investigation he took eight photographs of the disputed structure (Ex. P 1118 collectively). As appears from the report dated September 30, 1970 made by him, he also made a panchnama of the scene of offence. At the time of the said panchnama the Police took charge of five pieces of coconut shell and 'gular' marks on a wall of the disputed structure. The collection of evidence by Saluke took time, because Saluke wrote a letter dated February 12, 1970 (Ex. P 1177) to the Archaeological Survey of India Conservation Assistant Officer, Poona, requesting him to depute an expert to visit the disputed structure and after examining it and the carvings on its gate, to opine its approximate age and whether it was a temple or a mosque. Even on the date he gave evidence before the Commission, namely, on July 19, 1972, (that is, for a period of nearly two and a half years), he had not received any reply to the said letter. Saluke completed his investigation on December 28, 1970. He has deposed that in the course of his investigation he did not find or come across any evidence that the disputed structure was in the possession of the Hindus. The Senior Public Prosecutor gave his opinion on July 23, 1970. It appears that he opined that the case could not be sent up until

a decision was given in the proceedings under section 145, Cr.P.C. with respect to the disputed property launched by the Police. By his letter dated September 22, 1970 (Ex. P 1178) S.P., Khan intimated to Saluke that the I.G.P. had ordered that the case should be sent up to the Court immediately and that it was not necessary to wait for a decision in the section 145 proceedings. Khan sent back the opinion to the Senior Police Prosecutor for reconsideration, drawing his attention to the amendments made in section 153A, I.P.C. By his further note dated July 23, 1970 the Senior Police Prosecutor stated that he held to the opinion originally given and that instead of writing out his arguments it would be better if he discussed the case with Khan personally. Khan discussed the case with him personally and gave him the papers for writing out a report for the D.M., Kolaba. By his report dated September 30, 1970 (Ex. P 1175) Saluke applied to the D.M., Kolaba, for sanction to prosecute Bal Thackeray and the other accused. This report was submitted to the D.M., Kolaba through the office of the S.P., Kolaba, on October 9, 1970. At that time Savanur was on leave for one month and the Addl. D.M. was holding charge. He referred the matter to the Public Prosecutor for his opinion, which opinion was received on December 7, 1970. The opinion was against giving sanction and accordingly on December 11, 1970 the sanction was refused (Ex. P 1176). By his letter dated December 14, 1970 (Ex. G 261) the S.P. informed the I.G.P. that the D.M., Kolaba, had refused to give sanction for a prosecution under sections 153A and 295A, I.P.C. and that under these circumstances it was not possible to send up the charge-sheet in that case. At the foot of the said letter I.G.P. made the following comment:—

“Copy to H.S.

If this act on his part is not actionable I don't know what is.

Could Govt. review the decision of the D.M.”

A copy of the said letter was sent to the D.I.G. (Int.). By his letter dated December 22, 1970 (Ex. G 262) addressed to the I.G.P. the D.I.G. (Int.) expressed the following opinion:—

“It is a clear case under section 295, 447 and 143, I.P.C. if not under section 153-A for the simple reason that the property has been declared to be in the possession and ownership of the Mahad Muslims by the Revenue authorities in the near past and the act was calculated to hurt the religious feelings of the Muslims not to mention trespass and consequently an unlawful assembly.”

By his said letter the D.I.G. (Int.) requested the I.G.P. to have the case examined at governmental level. By his letter of the same date (Ex. G 263) the I.G.P. referred the case to the Home Secretary. In the said letter he stated:

“It is difficult to fathom why the D.M., Kolaba, should consider this as not a fit case for prosecution under Sections 153-A and 295-A.”

By this letter he requested the Government to review the decision of the D.M. and sanction the prosecution. By his letters dated February

10, 1971 and March 11, 1971 the I.G.P. sent reminders to the then Additional Chief Secretary. By his letter dated March 17, 1971 (Ex. G 264) the Deputy Secretary, Home Department, intimated to the I.G.P. as follows :—

“Government has reviewed the matter and after obtaining legal advice has acquiesced in the District Magistrate’s decision.”

86.18 Investigation into offences of the type involved in C.R. No. 8/70 against Bal Thackeray and others ought not to be protracted if these sections of the Indian Penal Code are to have any deterrent effect or if confidence in law and order is to be inculcated in the public. It is unfortunate that this simple matter was allowed to be complicated by the wrong description of the disputed property as the “Mahikavati Temple” in the F.I.R. and by the proceedings under section 145 Cr.P.C. which will be referred to later. The evidence before the Commission is fairly clear. All the senior police officers, namely, the I.G.P., the D.I.G. (Int.) and the S.P., Kolaba, were of the opinion that offences had been clearly committed. In the opinion of the Commission, it would have been better if the sanction for prosecution under section 153A and 295A, I.P.C. had been given and the matter allowed to be tested in a Court of law.

The joint meeting of the leaders

86.19 On January 22, 1970 on the advice of the S.D.M., Mahad, and the S.D.P.O., Mahad. a meeting of the prominent members of both the communities and of the local leaders of different political parties was convened by the Municipal President, Chandulal Mehta, to find means to ensure the maintenance of communal harmony in Mahad. The said meeting was held in the Municipal office, and in addition to the Municipal President, Chandulal Mehta, there were present S. B. Savant, Dr. Baburao Mehta, Ibrahim Tayyabkhan Chichkar, Abdul Kadir Kablay and about twenty other prominent local Muslims and Hindus. The officers who were present at the said meeting were the S.D.M., the S.D.P.O., the Taluka Magistrate and P.S.I., Vichare. The question of forming a Peace Committee was discussed at the said meeting, but the leaders of both communities and the political leaders expressed their opinion that the situation was completely under control and no untoward incident was apprehended and there was, therefore, no necessity for such a committee and the said idea was dropped. It was also decided that a joint meeting of the nominees of both the communities should be held to decide the fate of the disputed structure. No such meeting was, however, held [P.W. 97/1(10)/3212(5), P.W. 98/1(17)/3243(5)]. Ebrahim Chinchkar has stated that at the said meeting the Shiv Sena, the Jan Sangh, the P.S.P. and the Congress (O) workers insisted that they would build a temple to Goddess Mahikavati on the disputed property, while the Muslim leaders expressed an opinion that the site should be used for a secular purpose, such as a garden, which would

not perpetuate the dispute. Savant exhorted both sides to bury the past and to come to some amicable settlement regarding the use of the disputed property for some secular purpose. Dr. Baburao Mehta, Vasant Bhagwat, Dagdu Parte, Anant Shah and Shantaram Adivrekar were the chief spokesmen for the extremists who would have nothing short of a temple of Mahikavati at the disputed property, while Chichkar, Babasaheb Pansare, Shujauddin Kazi and Dr. Deshmukh, speaking for the Muslims, offered their co-operation in finding out an amicable settlement (C.W. 30/1(6)/3270(3-4).

86.20 Dr. Baburao Mehta has also given his version of what transpired at the said meeting. He has deposed (C.W. 46/3/3954):—

“ At that meeting Savant, myself and Bendu Kapdi spoke. Savant said that there was no doubt that Mahikavati was a Hindu temple ; but since the meeting consisted of both Hindus and Muslims, there should be a compromise and a statue of Shivaji or a public garden should be constructed at that site. In the course of my speech I said that since according to Savant there was no doubt that Mahikavati was a Hindu temple, both Hindus and Muslims should contribute money for rebuilding a temple on the site and that if this were done, Mahad would set an ideal example to the rest of India At this meeting a Peace Committee was set up consisting of 20 Hindus and 10 Muslims. The Peace Committee could not achieve anything because the Muslim members did not attend any of its meetings though I had twice gone and seen Dr. Deshmukh, Hasanmiya Pansare *alias* Bawa Pansare (the deponent of affidavit No. 316), Alimiya Gantare and Shujauddin Kazi (C.W. 31), though I could not meet them all.”

86.21 Dr. Mehta's version of what was said at the said meeting substantially bears out what Chichkar has stated that the extremists amongst the Hindu leaders wanted nothing short of a temple to Goddess Mahikavati on the disputed property. Dr. Mehta is the only witness who has alleged that a Peace Committee was formed at the said meeting. All other witnesses who have deposed about the said meeting are agreed that no Peace Committee was formed. Further, there are two reports on the said meeting, one dated January 24, 1970 from Taluka Executive Magistrate Joshi to the D.M., Kolaba (Ex. P 1126), and the other dated February 4, 1970 from the D.M., Kolaba, to the Home Secretary (Ex. P 1127), which was prepared in consultation with the S.P., Kolaba, in which the said meeting is referred to, and in both the said reports it is stated that at the said meeting it was decided that there was no necessity for forming a Peace Committee. Dr. Mehta's allegation that a Peace Committee was formed at the said meeting and that it could not function because of the recalcitrant attitude of the Muslim leaders cannot therefore be accepted and the said allegation appears to have been made by him in an attempt to make out that the Muslims were responsible for creating communal tension in Mahad.

The public meeting at the Veereshwar Temple

86.22 The adamant and uncompromising attitude adopted by the extremists amongst the Hindu leaders at the said joint meeting of the leaders held in the Municipal Office on January 22, 1970 can be seen from the fact that on January 23, 1970, that is, on the very next day after the said joint meeting, a public meeting of the Hindus was held in the Veereshwar Temple. The said temple is situate at a distance of about 250 paces from Savant's house. S.P., Khan [P.W. 97/1(10)/3212(6)], Joshi, Executive Taluka Magistrate, Mahad [P.W. 102/1(9)/3359(4)], S. B. Savant [C.W. 29/1(17)/3252(16), 11/3256], Ebrahim Chichkar [C.W. 30/1(6)/3270(4)], Dr. Baburao Mehta [C.W. 49/1(3)/3952(3), 7/3956] and Surba Tipnis (C.W. 47/17/3972, 22/3972-3) have deposed about the said meeting. A report on the said meeting was made by H.C., G. N. Mane of the L.I.B., Mahad, on January 31, 1970 (Ex. P 1073). The D.I.G. (Int.) has referred to the said meeting in his report dated January 29, 1970 to the Home Secretary (Ex. G 222).

86.23 The said meeting was called with the help of local Shiv Sainiks [P.W. 102/1(9)/3359(4)]. About 400 persons attended the said meeting. Dr. Baburao Mehta presided at the said meeting. At the outset he declared that they had all assembled at the said meeting as Hindus irrespective of their political affiliations. He said:—

“On 17th January the Shiv Sena leader, Bal Thackeray, awakened the Hindus by entering the temple and offering a coconut to the Goddess and by pitching a flag there. Since then discussions started between the Hindus and the Muslims which resulting in calling a meeting on 22nd January 1970 in the Municipality to organize a Peace Committee between the two communities. It was suggested in it that the Mahikavati Temple should be handed over to the Municipality where a garden should be constructed. But this plan should not materialize as we want to construct the Mahikavati Temple. So, for this purpose, we all Hindus should unite together.”

86.24 The other speakers at the said meeting were Madhavrao Watke belonging to the Congress (O), Vasant Bhagwat of the Jan Sangh, Shantaram Adivrekar, a press reporter, Chunilal Seth and Yeshwant Nikam, both belonging to the Congress (R), Municipal President Chandulal Mehta and Chande Guruji who was the retired Principal of Mahad Vidya Mandir High School. All these speakers stated that though the Muslims were in possession of the disputed property for the last 200 years, it was a Hindu temple and all Hindus should unite, setting aside party politics, and should construct a temple on this site. Surba Tipnis (C.W. 47) also addressed the said meeting. Dr. Mehta has not denied the correctness of H.C., Mane's said report (Ex. P 1073), and Tipnis, though he did not deny in his affidavit the correctness of the substance of his speech as set out in the said report, has chosen to do so in his cross-examination. His denial does not carry any conviction. According to Tipnis, he heard an announcement in the streets that a public meeting of the Hindus was to be held in the Veereshwar Temple on January 23, 1970 and that every Hindu

should make it a point to attend it and he, therefore, went there. According to H.C., Mane's said report Tipnis said:—

“Until now two meetings have taken place. Though the Police had informed me I could not attend those meetings, today's meeting being of the Hindu community and I being a part and parcel of it, I could attend this. I was not thinking that I could address this meeting but as you have asked me to speak, I conceded to it. The problem of the Mahikavati temple is not so simple, as a part of the Mahikavati temple is in the possession of the Muslims as per the land records Even then we should solve this problem peacefully I have become old and as such I am unable to work, but I fully support you by offering my sincere blessings.”

85.25 Mane's said report should be contrasted with the version given by Tipnis. He deposed (C.W. 47/7/3968, 22/3972-3):—

“The substance of my speech was that this was a serious question and that I was old but if they wanted to tackle the question they should do it peacefully

“Baburao Mehta (C.W. 46) was proposed into the chair. He said at that meeting that the Mahikavati Temple should not be handed over to the municipality for laying out a garden as they wanted to construct a temple there and that for the said purpose all Hindus should unite together. I did not listen carefully to the speeches made at this meeting because I did not want to get involved in this matter. The general stand of the Jan Sangh and the other Hindus of Mahad was that this was a Hindu temple and the Hindus should unite together to get possession of it and build a temple there and this was the theme of the speeches made at the said meeting. In the course of my speech I did not offer my blessings to the construction of a temple on this site. As I am an old man, I gave my blessings to everybody in the meeting that they should act properly. Generally I am not in favour of constructing any new temple because, as it is, several old temples are being neglected. I was also against constructing a Hindu temple in a locality which was not a Hindu locality. Today I am of the opinion that the construction of a temple at the disputed site would lead to tension between Hindus and Muslims, though at that time this aspect did not occur to me. I did not point out to the meeting that it was no use constructing a temple on this site because I was not particularly interested in this matter. Today I feel that I ought to have pointed out this fact to the audience.”

86.26 It is pertinent to note that even according to Tipnis, there was no reference in the speech of Dr. Mehta or of any other speaker about rebuilding a temple with the co-operation of the Muslims. On the contrary, as H.C., Mane's said report shows, all the speakers were unanimous in exhorting the Hindus to unite to get back possession of the disputed property from the Muslims, who, according to them, were in illegal possession thereof, and to rebuild the temple of Goddess Mahikavati thereon. It is difficult to believe that so seasoned a politician as Tipnis did not realize that a public move to construct a temple on

the disputed property, which was claimed by the Muslims as a mosque and on which there was a Muslim cemetery, would create tension between the two communities. The role played by Tipnis in the communal situation which developed in Mahad in 1970 was not a happy one. As will be seen later, he appears to have taken a prominent part in the social boycott enforced against the Muslims in the Kclaba District in April and May 1970. His statement, namely, "As I am an old man, I gave my blessings to everybody in the meeting that they should act properly", only means that as he was an old man, the fight for the temple should be taken up by the younger people and that he gave blessings to their efforts. The fact that Hindu leaders of different shades of opinion, namely, the Jan Sangh, the P.S.P., the Congress (O), the Congress (R), the Shiv Sena as also Independents, participated in the said meeting and were all of them unanimous in their design to construct a temple to Goddess Mahikavati on the disputed property shows what strong impact Bal Thackeray's actions on January 17, 1970, the speeches made by the Shiv Sena leaders that evening and the Shiv Sena propaganda had made on the Hindus of Mahad ; for Hindus, irrespective of the political party to which they belonged, came together on a common plank to get back the land which, according to them, for the last two or three centuries was illegally in the possession of the Muslims — an attitude which must create anti-Muslim feelings in their mind and fill the Muslims with fear and apprehension for their future safety.

The Urs of the Navre Pir Dargah

86.27 Because of the communal tension prevailing in Mahad, the Muslims who had arranged a programme of 'sandal' and 'qawali' on January 23, 1970, as a part of the celebrations of the Urs of the Nave Pir Dargah, cancelled the said programme and performed only the necessary religious ceremonies [P.W. 97/1(10)/3212(5), G.W. 11/1(15)/3398(6), C.W. 30/1(7)/3270(4), M.M.W. 1/1(18)/3317(9), 9/3323 and C.W. 30/1(7)/3270(4-5)]. Dr. Mrs. Kazi and Erbahim Chichkar have stated in their affidavits that while the Muslims had gathered in the night at the Navre Pir Dargah for the performance of religious ceremonies, at about 11-30 p.m. while the ceremonies were in progress some police constables came running and informed them that a Hindu mob was coming into the Muslim 'mohalla' shouting the slogan "Mahikavati Ki Jai" and that, therefore, the policemen who were on bandobast duty at the aforesaid mosque should remain alert ; and that this news caused a panic amongst the Muslim congregation which broke up and returned to their homes to give protection to their women and children in case of any trouble. It was submitted on behalf of the Executive Magistrates and the District Police Officers that there was no entry in respect of the said incident in the station diary of the Mahad Town Police Station or in any other police record and, therefore, such an incident could not have taken place. What Dr. Mrs. Kazi and Chichkar have stated is, however, corroborated by Savant. Savant has stated it

his affidavit that about 100 to 150 boys marched straight from the said meeting in the Veereshwar Temple towards the disputed property shouting slogans, but were stopped by the Police near the Muslim 'mohalla'. Further corroboration is to be found in a contemporaneous document, namely, a representation dated January 24, 1970 (Ex. P 1072) signed by sixteen Muslims from Mahad and addressed to the Chief Minister with copies to Mr. Antulay, the then Minister of State for Education, Law and Judiciary, Mustafa Fakihi (B.R.W. 3), the D.M., Kolaba, the S.P., Kolaba, and the P.S.I., Mahad. In the said representation one of the incidents referred to was the breaking up of the religious ceremonies at the Navre Pir Dargah by reason of the information given by some police constables who came running there and informed the congregation that a Hindu mob was coming to the Muslim 'mohalla' and that the police constables at the said Dargah should be alert. On being asked by the Commission, Mr. Rane, Counsel for the Executive Magistrates and the District Police Officers, Mr. Rane stated that no inquiry had been directed to be made or was made with respect to the said representation.

86.28 In the situation then prevailing in Mahad when the rehoisting of the flag on the disputed structure on the night of January 20, 1970 led instantly to the gathering of a crowd and was followed by a public meeting, it is not possible to imagine that the audience, and in any event the younger section of it, which had attended the said meeting in the Veereshwar Temple at which it was decided that a temple to Goddess Mahikavati should be constructed on the disputed property and which had heard speeches exhorting all Hindus to unite for this purpose, quietly dispersed after the same meeting without any demonstration and tamely went home to bed. I, therefore, find that the said incident set out in the affidavits of Dr. Mrs. Kazi and Ebrahim Chichkar did take place.

The proceedings under section 145, Cr.P.C.

86.29 On January 24, 1970, P.S.I., Vichare filed an application under section 145, Cr.P.C. (Ex. P 1077), before the S.D.M., Mahad, in respect of the disputed property. The opponents to the said application were Dr. Baburao Mehta and Dagadu Parte as Opposite Party No. 1 and Hasanmiya Gulam Mohiddin Pansare and Abdul Kadir Kable as Opposite Party No. 2. It was stated in the said application that the disputed property stood in the name of the Muslim Jamaat "as per the enquiry of the Tahsildar, Mahad" and that according to Opposite Party No. 1, in the olden days there was a temple of Mahikavati on the disputed property and "so the land is in possession of the Hindu community and is belonging to them". It was further stated in the said application that according to Opposite Party No. 2, there was a mosque on the disputed property in the olden days and "so it is in possession of Muslim community and is belonging to them". The said application further recited that by reason of the said dispute, on January 17, 1970, Bal Thackeray and others entered the disputed structure, broke a coco-

nut and hoisted a saffron flag thereon, which was noticed to have been removed on January 20, 1970 and that persons belonging to the Shiv Sena had hoisted another saffron flag on the disputed structure. The said application further stated:—

“Due to this dispute strained relations have occurred between the Hindu and Muslim communities. There is a likelihood of breach of public peace.

“Under these circumstances there is a dispute about the ownership and possession of the said land.”

The said application prayed that action under section 145, Cr.P.C. should be taken with respect to the disputed property and in order to prevent any untoward incidents between the Hindu and Muslim communities, the disputed property might be attached and kept in possession of the Government pending the decision on the said application.

86.30 By his letter dated February 14, 1970 (Ex. P 1078) the S.D.M. pointed out to Vichare that though it was necessary to have sent along with the said application statements of the persons concerned and the documents produced by them, he had not produced any evidence collected by him. Vichare was, therefore, asked to arrange to send the statements and evidence of the two Opposite Parties to the said application and, if necessary, to record statements of some other persons concerned and to collect additional evidence and submit them within four days along with all documents showing that the disputed property was entered in the name of the Muslim Jamaat.

86.31 On February 19, 1970, Vichare recorded the statement of Dr. Baburao Mehta (Ex. P 1159). In his statement Baburao Mehta stated:—

“I am a resident of Mahad. The ancient temple of Mahikavati situate near Bundar Naka which is in a ruined and dilapidated condition is of us the Hindus only. At that place, even now the remnants of the temple speak about it. Upto the year 1900 A.D. the said temple was in the possession of the Government. However, some Hindu traitor got it entered in the name of the Muslim community. They have neither purchased the said premises nor have they paid rent for it. Obviously, the incident of getting it entered in their names is bogus. There is absolutely no doubt that it is our temple and we claim that it should be given in the possession of us the Hindus.”

86.32 The next day, that is, on February 20, 1970, Vichare recorded the statement of Dagadu Parte (Ex. P 1180), who stated:—

“I am a resident of Mahad. The ancient Mahikavati Mandir which is in a dilapidated condition and which is situate near Bunder Naka is of us the Hindus. Previously, it was in possession of the Municipality. Subsequently, at the time of City Survey, it was entered in the name of the Muslim community. I cannot say as to how it was entered in its name. But the same has been entered at that time by someone in the name of the Muslim community by

mistake. Even now the remnants of a Hindu Devasthan can be seen in the said temple and the idol of Ganpati can also be seen there. The said Devasthan is of the Hindus and we the Hindus do not feel that it should remain in the possession of the Muslims in such ruined condition in this present democratic rule. For this reason in order that they should give it in our possession we asked them in a conciliatory manner, but they are not prepared to do so. For this reason, we the Hindus will, in any event, take possession of the said temple which belongs to us only. If these persons obstruct us at that time, then we will disregard it and if peace is disturbed at that time, then the responsibility thereof will not lie on us. What we say is only that it should be given in our possession."

86.33 It is clear from the said two statements that according to both Dr. Baburao Mehta and Dagadu Parte, the disputed property was in the possession of the Muslims for a far longer period than the period of limitation and that they desired to take possession of it from the Muslims irrespective of any breach of the peace which might be caused thereby. The circumstances under which the said application was made appear to be peculiar and the necessity for filing it highly dubious. Even a person with an elementary knowledge of law could see that at least the said two statements made out no case whatever except one of an open challenge to commit a breach of the peace in order forcibly to take possession of the disputed property. Vichare's evidence on this point, as on almost every other point, makes sorry reading (P.W. 101/5-6/3339-41). With reference to the statement in the said application, namely, "The say of the Hindu community people was that the land was in the possession of the Hindu community and belonged to them", he deposed that this was stated by Dr. Baburao Mehta and Dagdu Parte who were made Opposite Party No. 1 to the said application and that the said claim was made by them after Bal Thackeray's meeting on January 17, 1970. Vichare deposed that he himself thought of filing the said application and that before making the said application he had recorded the said two statements. When asked to mention the dates on which he had recorded them, he changed his answer and said, "I now say that I recorded their statements after I made the application. I recorded the statements after making the application, either on the day I presented the application or on the previous day." He was faced with the statements actually recorded by him, whereupon he was forced to admit that they were recorded on February 19 and 20, 1970 respectively and that he had recorded the said statements by reason of the said letter dated February 14, 1970 from the S.D.M. (Ex. P 1078). He then testified as follows:—

"I now say that after Bal Thackeray planted the flag there was a talk in the town, including by Dr. Baburao Mehta, that the disputed site was a temple and belonged to the Hindus. Prior to filing the application I had not collected any evidence in writing. I know the difference between a claim to possession of land and threaten-

ing to take possession of land. Bal Thackeray said that the disputed site belonged to the Hindus and the Muslims had taken it away and the Hindus would therefore take it back from them. After Bal Thackeray had said this, others, including Dr. Baburao Mehta, were saying the same thing. I did not make Bal Thackeray a party to this application because he is not from Mahad. Dagdu Parte in his statement had stated that they would take possession of this site under any circumstances and would not pay heed to anyone. Dr. Baburao Mehta had also stated that the Hindus must get possession of this site."

86.34 It is obvious that Vichare had without any inquiry accepted the Hindu contention that the disputed property was the site of the ancient temple of Mahikavati. The attitude and conduct of Vichare, as revealed in the evidence, show that Vichare, as an officer in charge of a police station, had not kept a just balance between the two communities and had been swayed more by the contentions of the Hindus and has been unsympathetic towards the grievances of the Muslims, however justified. He had talked rudely on the telephone to Dr. Mrs. Kazi, when she had sought to complain to him on the night of December 21, 1969, so that she was compelled to approach the S.D.P.O. and the S.P. In the entry in the station diary in respect of the incident at the disputed property on January 17, 1970 (Ex. P 1186), he has referred to it as the "Mahikavati Mandir". Again in the station diary entry (Ex. P 1164) relating to the rehoisting of the flag by Anna Pawar, Shantaram Bamane and Ashok Nagarkar he has referred to the disputed property as the "Mahikavati Mandir". In the said F.I.R. (Ex. P 1101) filed by him in the case registered against Bal Thackeray and others in C.R. No. 8 of 1970 also he has referred to the disputed property as the "Mahikavati Mandir". His report dated January 19, 1970 (Ex. P 1165) made to the S.P., Kolaba, about the incident which took place on January 17, 1970 throughout refers to the disputed property as the "Mahikavati Mandir". The said report contains the following wholly incorrect and misleading statement:—

"The said Mahikavati Mandir is situated in City Survey Property No. 337-1 and since the year 1961 it is in the possession of the Muslim Jamaat as per the decision of the Tahsildar, Mahad. It is learnt that formerly there was the Mahikavati Mandir at that spot.

But since some years it has become a graveyard."

To say that the disputed property was in the possession of the Muslim Jamaat only from 1961 and that too by reason of the decision of the Tahsildar, Mahad (Ex. P 1061) was palpably wrong. The extent of his knowledge about the disputed property can be judged by the following answers given by him in the witness-box (P.W. 101/21/3356):—

"Prior to January 17, 1970 I had not gone and seen the disputed structure. After Bal Thackeray planted the flag there and before it was removed, I had visited the structure. All that I found were four ruined walls without a roof and a Muslim graveyard next to it.

I cannot explain why this structure is described as "Mahikavati Mandir" in the Station Diary entry Exhibit P 1164." He did not register any case against Anna Pawar and Shantaram Bamane and Ashok Nagarkar for rehoisting the flag. He did not even record their statements because, as he deposed, the Hindus might have become angry and presumably Dagdu Parte, the Shakhapramukh of Mahad Taluka Branch of the Shiv Sena, who had come to the police station, might also have become angry. Reading between the lines, a strong suspicion arises that Vichare was set up to file the said application by Dr. Baburao Mehta and Dagdu Parte or one of them with a view to giving them an opportunity to agitate their case at law. Dr. Baburao Mehta has deposed that after Bal Thackeray's visit to Mahad he looked into the municipal and revenue records and for the first time came to learn that an entry had been made in 1906 transferring the disputed property in the name of the Muslim Jamaat (C.W. 46/13/3961-2). One can understand Vichare's selecting Dagdu Parte, who was the Shakhapramukh of the Mahad Taluka Branch of the Shiv Sena, as a party to the said application as one of the persons to represent the Hindus since the Shiv Sena had started this agitation, but Dr. Mehta was at that time the President of the Mahad Town Congress Committee and though he had presided over the said meeting held in the Veereshwar Temple on January 23, 1970, he had not yet openly taken a leading part in the agitation for construction of a temple as he did subsequently with the formation of the Temple Committee. Vichare, therefore, could not have selected him as the other person to represent the Hindu case unless he previously had a talk with him on this subject.

86.35 The subsequent history of the said proceedings under section 145, Cr. P.C. may as well be set out here. By an order dated April 2, 1970 (Ex. P 1079) the S.D.M., Mahad, appointed Palkar, Circle Inspector in the Revenue Office, Mahad as the receiver of the disputed property pending the hearing and final disposal of the said application. Thereupon possession of the disputed property was taken charge of by Palkar. A significant fact is that the person who handed over possession to Palkar, as shown by the possession receipt dated April 16, 1970 (Ex. P 1080), was Sharif Ibrahim Tare and the possession was given by him as Trustee of the Muslim Jamaat and on the Jamaat's behalf. On June 23, 1972 the S.D.M. gave his judgment directing possession of the disputed property to be given to the Mahad Municipal Council (Ex. P 1120). Hasanmiya Pansare and Abdul Kadir Kablay thereupon went in revision to the D.M., Kolaba, and by his order dated June 30, 1972 (Ex. MM 10) the D.M. stayed the execution of the said order of the S.D.M. until the hearing and final disposal of the said revision application which is still pending.

86.36 On behalf of the Executive Magistrates and District Police Officers, reliance was placed upon the initiation of these proceedings as an instance of the prompt action taken by the Police to save an ugly situation. Not only am I unable to accept this submission, but

in my opinion these proceedings were unnecessary and were commenced with the ulterior motive of clothing with the garb of a legal dispute the naked threat by the local Hindu leaders to deprive the Muslims of their lawful possession of the disputed property.

The Muslim representations

86.37 Sixteen Muslims of Mahad addressed a written representation on January 24, 1970 to the Chief Minister (Ex. P 1072). Copies of the said representation were sent to Mr. Antulay, the then Minister of State for Education, Law and Judiciary, Mustafa Fakhri (B.R.W. 3), the D.M., Kolaba, the S.P., Kolaba, and the P.S.I., Mahad. After setting out the previous history including the incident at the time of the Urs of the Navre Pir Dargah, the said representation stated:

“There is a high tension at Mahad on account of Shiv Sena activities over the above land and the mosque and it seems that they are bent upon creating communal disturbance. It may be that the anti-social element may also take advantage of this situation and therefore it is necessary to take immediate preventive action in this case.

“The Muslim community on its part have made every effort to maintain communal harmony in the city and they are also prepared to discuss the above dispute with any authority or persons to avoid communal tension and disturbance.

“Under these circumstances we have to request you to take immediate preventive action to avoid any communal disturbances in the said city or elsewhere near about.”

As mentioned earlier, in reply to a question put by the Commission, Mr. Rane, Counsel for the Executive Magistrates and Police Officers, stated that no inquiry was directed to be made or was made in connection with this application.

86.38 S. S. Jog, Deputy Commissioner of Police, S.B.I., C.I.D., Bombay, by his report dated January 31, 1970 (Ex. G 223) intimated to the Home Secretary that it was learnt that some prominent Muslim leaders from Mahad had waited on Bal Thackeray on January 25, 1970 and had discussed with him the issue of the “Mahikavati Temple” at Mahad and had explained to him the proofs which they had got with them about the ownership of the disputed property and that it was decided that the prominent local leaders of both communities should sit down together and settle the matter amicably, and that if they could not do so, they should seek redress in a Court of Law. The said report further stated, “It is learnt that Bal Thackeray brought to the notice of the Muslim leaders the necessity of withdrawing the prosecution launched by them against him as a first step towards straightening of the relations”. The said report also mentioned that Bal Thackeray would undertake a tour of the Konkan from February 18, 1970 to February 22, 1970. Dy. S.P., Patankar has also stated that Abdul Kadir Kablay was reported to have visited Bombay on January 26, 1970 to discuss the legal aspects of the dispute [G.W. 11/1(14)/3398(6)].

86.39 Abdul Kadir Kablay denied in cross-examination that in January 1970 he had gone to Bombay with any papers relating to the disputed property to see Bal Thackeray or that as he could not meet Bal Thackeray, he instead saw the advocate, Mr. Solkar. He, however, stated that he had come to Bombay to see Mr. Solkar prior to January 17, 1970 [M.M.W. 3/19/3394(19)].

86.40 There is no direct evidence of any meeting between any Muslim leaders or even some of them and Bal Thackeray, as stated in Jog's said report or by Patankar. From the fact, however, that a meeting had been arranged to take place at Dr. Deshmukh's house on January 17, 1970 between Bal Thackeray and the Muslim leaders and from the attitude adopted by the Muslims at the said joint meeting held in the Municipal Office on January 23, 1970 and in their said application dated January 24, 1970 (Ex. P 1072) that they were prepared to discuss the above dispute with any authority or person to avoid communal tension and disturbance, it is very likely that the Muslims, finding that their efforts with the local Hindu leaders of Mahad were not proving fruitful, might have as a last resort gone to Bombay to see Bal Thackeray personally. As a matter of fact, as has transpired in evidence, some of the Muslims were at one time even willing to join the Shiv Sena in order to placate it and the Hindus of Mahad (C.W. 29/50/3442-3). It would, therefore, be natural for the Muslim leaders, who might have gone to Bombay, to avail themselves of the opportunity of seeing Bal Thackeray as also to take legal advice.

The Temple Committee and Savant's counter-campaign

86.41 Getting perturbed at the hold acquired by the Shiv Sena on the Hindus of Mahad, including the members of other political parties in Mahad such as the Jan Sangh, the P.S.P. and the Congress, by means of the agitation started by it with respect to the disputed structure, Savant set out to counteract the Shiv Sena influence. He suggested to the Muslims that the best solution to this controversy would be to hand over the disputed property to the Government. He began his counter-campaign with an article headed, "Mahikavati of Mahad : A search into the real state of affairs", published in the 24th January 1970 issue of the Marathi daily the 'Navashakti' (Ex. P 1075). In the said article after setting out the history of the disputed structure, he tried to draw sympathy for the Muslims of Mahad by pointing out that most of them were originally converted against their will as could be seen by their Hindu surnames which they were continuing to use. He concluded his said article by stating:

"One can see the Gharata (house) of the founder of the family and the Tulsi Vrindavan in the Muslim locality at Tudil. It will not be proper at all to take revenge against the present Muslims who are descendants of those poor persons who had to give up their religion against their will as a result of the wrong committed

by the Siddi. The behaviour of the present generation of the Muslims in Mahad with the Hindus is reasonable. They have realized that the Hindus and the Muslims ought to behave with each other with due respect to the feelings of each other so that the real feeling of Indian nationhood will develop. And for that reason only, prominent leaders of the Muslim community have informed the Police that although Shri Thackeray has technically committed an offence by showing the arrogance of entering the property in the possession of the Muslim community, no criminal case should be filed against him and they have also expressed their willingness to hand over this land to the Government in order to avoid disputes in future.

“As a matter of fact, the Hindus and the Muslims from Mahad ought to sit together and chalk out a plan regarding the use of this land in future. But looking to the way in which persons from outside Mahad are handling this issue, an amicable solution of this issue seems to be difficult. Therefore the only best remedy for it is to hand over this land to the Government.”

86.42 In the next day's issue of the Shiv Sena weekly the 'Marmik' there appeared an article headed "History of Mahad-Mahikawati (Mahishmati) Temple" (Ex. G 268) and also a news report headed "Saffron flag hoisted on Mahikawati Temple at Mahad" on the January 17, 1970 incident (Ex. G 269). The object of the said article is shown by its sub-title, namely, "Here is the evidence of how the Mahikawati Temple, where we broke the coconut, is a temple of the Hindus". The said article has already been referred to in Chapter 83.

86.43 The next move of Savant was to get Dr. Baburao Mehta removed from his post of the President of the Mahad Town Congress Committee. A joint meeting of the Executive Committee of the Mahad Taluka Congress Committee and the Executive Committee of the Mahad Town Congress Committee was held on January 28, 1970. The second item on the agenda was "to consider the anti-party activities of Shri Dr. Baburao P. Mehta, President of the Mahad Town Congress Committee". At the said meeting a resolution (Ex. No. 72) was passed unanimously whereby it was resolved as follows:—

“The behaviour of Dr. Mehta during the recent days is clearly contrary to the aims and objects of the Congress. Recently he has started supporting the Shiv Sena openly and he is taking steps with a view to increase the communal animosity at Mahad. In spite of giving special invitation he is not present for today's meeting. This year he has not even become an active member. In these circumstances having regard to the discipline of the party, it is not proper to continue him as the President of the Town Congress Committee. For this reason, he is removed from the said post. Similarly he is a nominated councillor of the Mahad Municipal Council. The Congress is in majority in the Mahad Municipal Council and he had been nominated in the capacity of the Congress worker only. As he has lost the faith of the Mahad Town Congress Committee

and the Mahad Taluka Congress Committee, he may be asked to tender his resignation of the post of the councillor as nominated councillor.”

86.44 At first Dr. Mehta prevaricated about his removal from the presidentship of the Mahad Town Congress Committee. He sought to make out that he had ceased to be a member of the Congress Party because of the split in that party in 1969. Ultimately, he admitted that he had been removed from his post as President of the Mahad Town Congress Committee after the split in the Congress and that he had thereafter ceased to be a member of Congress(R). He also admitted that the said resolution was passed after a show cause notice had been issued to him, but stated that he did not give any reply because the Committee did not have any powers to issue such a notice (C.W. 46/2/3953).

86.45 Savant also called a public meeting on January 28, 1970. The said meeting was held under the auspices of the Mahad Taluka Congress Committee. A pamphlet (Ex. P 1126) was distributed announcing the said meeting. The object of the said meeting was to felicitate the Congress candidates who were successful in the elections to various co-operative institutions and the said pamphlet stated that at the said meeting Savant was going to speak on “The Mahikawati episode and the present political situation”. A report on the said meeting was made by H.C., Mane of the L.I.B., Mahad (Ex. P 1076). Savant has admitted the correctness of the said report except that, according to him, the said report omitted the most important part of his speech, namely, the one which referred to the incidents of 1959 and 1960 (C.W. 29/36/3294). The said meeting was held at 10 a.m. on January 28, 1970. At the said meeting Savant referred to his said article on the disputed property published in the ‘Navashakti’ and stated that the history of the disputed property set out in the ‘Marmik’ was not correct. He said:—

“Now those who are Muslims are Indians and they have affection for Bharat. It is not desirable to punish the present Muslims because that temple was demolished by the Siddi. If we institute legal proceedings, their right will be established. But when we tell them as brothers, they are willing to part with that land.”

He then referred to the said joint meeting held at the Municipal Office and criticized the attitude of Shantaram Adivarekar and Vasant Bhagwat at the said meeting. He also referred to the said meeting held in the Veereshwar Temple and expressed his surprise how the workers of the Jan Sangh had participated in it. He also referred to the members of the Shiv Sena giving abusive shouts and slogans after the said meeting was over and pointed out that the Muslims being unnecessarily provoked though they were willing to part with the disputed property. He emphasized the undesirable effect of this agitation on the daily routine of the people and the trade. He pointed out that a number of college students had gone away to their villages and the Muslims had sent away their families to distant places. He said:

“It is not understood whether these people have to make an ‘Ahmedabad’ here. It should be resolved unanimously in a meeting whether to construct a temple, garden or memorial on the land they want to part with. It is not advisable to create tension.”

He asked the Hindu and the Muslim leaders to sit together and finally decide about the disposal of the disputed property.

86.46 With reference to Savant’s said speech S.P., Khan has stated in his affidavit [P.W. 97/1(10)/3212(6)]:

“Referring to the visit of Shri Thackeray to the Mahikavati on 17th January 1970 and hoisting of the Bhagva flag there, Shri Savant observed that Shri Thackeray acted like ‘Nadirshah’. This was obviously not liked by some of the people and two stones were pelted at the meeting, Policemen took immediate steps and there was no further incident.”

Savant had denied making any such observation. In cross-examination, Khan admitted that the said observation of Savant was not to be found in H.C., Mane’s said report (Ex. P 1076), but he pointed out that the said report was not a verbatim report and stated that he had been orally informed by one of the policemen about the said observation made by Savant. In his report dated February 21, 1970 (Ex. G 235) made to the Home Secretary, the D.I.G. (Int.) has mentioned that in his said speech Savant bitterly criticized Bal Thackeray, calling him a “Nadirshah”, and had said “that they would reduce the Shiv Sena to pieces at Mahad”. C.P.I., Saluke has also stated in his affidavit that Savant criticized the Shiv Sena in general and Bal Thackeray in particular in connection with their behaviour on January 17, 1970 [P.W. 105/1(6)/3418(2)]. It is really unnecessary to decide this question. Political opponents, when they attack each other at public meetings, do not do so in temperate or restrained language. The main object of the said meeting was to counteract the influence which the Shiv Sena was gaining in Mahad. The main speaker was Savant and the theme of his speech was the ‘Mahikavati issue’ and the behaviour of the Shiv Sena and its Chief. Savant has himself stated in his affidavit [C.W. 29/1(18)/3252(17)]:

“The article in the ‘Navashakti’ and this public meeting produced a salutary effect on the public, so much so that the Temple Committee in spite of its broad spectrum (as explained above it consisted of the workers of the P.S.P., the Jan Sangh, the Syndicate Congress and the Shiv-Sena) found that it was not receiving any support in the town. The Committee, therefore, was dissolved within a week of my public speech. The sponsors of the Committee, of course, took care to put the whole blame of the failure of the Committee on me in a public meeting in the Veereshwar Temple.”

86.47 Ebrahim Chichkar has also referred in his affidavit to this meeting. He has stated [C.W. 30/1(8)/3270(5)]:

“Shri Savant also addressed a public meeting on 28th January 1970 in Mahad which had a record attendance from all over the taluka and exposed the political motives of the persons and parties

who were backing the Shiv Sena in Mahad. The meeting had a tremendous effect. The temple agitation died down and the Temple Committee was dissolved within a week."

86.48 Another public meeting of the Hindus was held at the Veereshwar Temple on January 30, 1970 under the presidentship of Dr. Baburao Mehta. At the said meeting a committee styled as "Mahad Mahikavati Peace Action Committee, Mahad," popularly known as "the Temple Committee," was formed. Dr. Baburao Mehta was made the President of this committee. There were twenty persons on that Committee, including Dr. Baburao Mehta who was the main person and the activating force in the said committee, Baburao Ranade, Madhavrao Wadke of the Congress (O), Vasant Bhagwat of the Jan Sangh, Shantaram Adivrekar, Chande Guruji who was the retired Principal of Mahad Vidyamandir High School, and Chunilal Sheth and Yeshwant Nikam of Congress (R). The said Committee was entrusted with the work of collecting funds for the construction of a temple on the disputed property as also the evidence for establishing the legal right of the Hindus in respect of it. Dr. Baburao Mehta and Vasant Bhagwat, the Kolaba District Secretary of the Jan Sangh, were the speakers at the said meeting. They exhorted the audience that all Hindus, irrespective of their political leanings, should unite on the issue of constructing a temple on the disputed property. They declared that they had no intention of spoiling good relations between the Hindus and the Muslims and advised the Muslims not to misunderstand or be afraid, nor approach the Police for protection as the Hindus themselves would protect them. According to Dr. Mehta, a temple was to be built on the disputed property only if there was a consensus amongst the Hindus and the Muslims of Mahad and if contributions were given for this purpose both by the Hindus and the Muslims. He has, however, admitted that only Hindus were present at the said meeting as also at all other meetings held in the Veereshwar Temple [P.W. 97/1(10)/3212(6); C.W. 46/7/3956-7; G.W. 11/1(18)/3398(7); P.W. 101/4/3339; Ex. G 225].

86.49 It appears that thereafter several Shiv Sena and other local Hindu leaders, including Dagdu Parte, Sitaram Parte, Prabhakar Patkar and Madhu Pawar, approached the Muslims to find out from them what decision the Muslim Jamaat had taken and if it had not as yet taken any decision, to decide the question soon. Accordingly, on February 7, 1970 a private meeting of about twenty-five Muslims was held in the house of Abdul Kadir Kablay under the presidentship of Hasanmiya Pansare. Most of the members of the committee of the Jamaat had, however, gone to Bombay, and it was decided to hold a meeting again after a few days. It was also decided at the said meeting to hand over copies of the documents pertaining to the disputed property to the P.W.P., M.L.A., Krishnarao Dhulap, to enable him to ask a question thereon in the Maharashtra Legislative Assembly on March 2, 1970 and for the Muslim M.L.As. to support it. after which the Government should take over the disputed property and

construct a statue of Shivaji thereon or turn it into a public garden, and thus resolve the dispute. It was further decided that the matter should be discussed with the Hindu leaders after Bakri-Id [P.W. 97/1 (10)/3212(6), Exs. P 1081 and G 233].

86.50 Thereafter, as appears from the report dated February 20, 1970 made by the D.I.G. (Int.) to the Home Secretary (Ex. G 233), Dr. Baburao Mehta and the other members of the Temple Committee met Bal Thackeray at Bombay and informed him that the Muslims had agreed to construct a statue of Shivaji on the disputed property instead of a temple. Bal Thackeray thereupon informed them that the issue was to be settled by the citizens of Mahad and that they should not drive him into taking part in local politics. He further expressed his opinion that there was no harm if a statue of Shivaji was erected on the disputed property instead of a temple.

86.51 The Temple Committee did not succeed in collecting any funds (C.W. 46/7/3957). This fact and the aforesaid opinion expressed by Bal Thackeray made Dr. Baburao Mehta dissolve the Temple Committee, which he did by issuing a statement on February 9, 1970 (Annexure to Ex. P 1157). The said statement was in the form of a letter addressed to the President of the Mahad Municipal Council. It stated that the President of the Temple Committee had seen the Muslim leaders on two occasions but had not succeeded in holding a joint meeting and therefore a decision had been taken to dissolve the Committee with effect from February 9, 1970.

86.52 P.S.I., Vichare has made a report dated February 10, 1970 (Ex. P 1157) in which he has referred to some of these events. From the said report it appears that several Hindus approached Dr. Baburao Mehta and told him that he should not be adamant about constructing a temple on the disputed property if a garden were developed or a statue put up thereon. This shows that the efforts of Savant and the speech made by him at the said meeting held on January 28, 1970 did have an effect on the public opinion and resulted in the Temple Committee not receiving public support, and it thus bears out the claim made by Savant in his affidavit that it was he who was responsible for the Temple Committee not succeeding in its objective.

Administrative and police inaction

86.53 We have already seen in Chapter 8 (paragraph 8.15) that by the Home Department's letter dated August 3, 1968 (Ex. G 4) the Government had issued instructions about the misuse of places of religious worship for political activities. The said letter was addressed to all D.Ms., Commissioners of Police, Ss.P. with copies to all Divisional Commissioners, the I.G.P., the D.I.G. (Int.), and all Range D.I.Gs. In the context of the said two public meetings of the Hindus held in the Veereshwar Temple on January 23, 1970 and January 30, 1970 respectively, the text of the said letter requires to be reproduced. The said letter stated as follows:—

“Communalists are seen taking advantage of places of religious worship for political meetings which tend to create communal feelings. You are, therefore, requested kindly to keep a watch on political activities in places of religious worship and to collect advance intelligence of such activities. If action becomes necessary on account of such activities, it should be taken against miscreants outside the places of religious worship.”

On receipt of the said letter the D.M., Kolaba, issued necessary instructions to all S.D.Ms. and Taluka Executive Magistrates, and the S.P., Kolaba, issued necessary instructions to all police officers (Exs. P 1173 and P 1156).

86.54 It is obvious that the holding of public meetings of the Hindus in a temple and the forming of a committee, all with the specific object of constructing a temple on a property belonging to the Muslims, must necessarily create “communal feelings”. The agitation for constructing a temple on the disputed property was one inspired by a political party, namely, the Shiv Sena, and the real object of the said agitation was to gain a political foothold in the Kolaba District and to enhance that party’s political reputation in the District. To hold public meetings of this nature in a temple cannot be said to be a proper or legitimate use of a place of religious worship. Reports made by various officers in respect of these meetings show that the Government, the D.M., the Executive Magistrates, the State Intelligence, the local intelligence, the S.P., the District Police and the local police station were all aware about the holding of these meetings and what was happening thereat. Yet, in spite of the instructions contained in the Government’s said letter dated August 3, 1968 (Ex. G 4) no action whatever was taken either in respect of these meetings or after the first meeting was held on January 23, 1970, to prevent the holding of other meetings in the Veereshwar Temple.

Conclusions

86.55 The evidence before the Commission has conclusively established the following facts:—

- (1) The Muslim leaders were not coerced into giving the writing dated January 18, 1970 (Ex. P 1069) requesting that no action should be taken against Bal Thackeray or the other Shiv Sena leaders. The said writing was given by them of their own volition after discussing the matter with S. B. Savant and the officers and as being a wiser and more diplomatic course to adopt.
- (2) There is no evidence as to who removed the flag from the disputed structure in the night of January 19, 1970.
- (3) Another flag was hoisted on the disputed structure on the night of January 20, 1970 by the Shiv Sena workers Anant *alias* Anna Ramchandra Pawar, Shantaram Mahadeo Bamane and Ashok Kumar Nagarkar.

- (4) The conduct of the local police in connection with the incident of the re-hoisting of the flag on the night of January 20, 1970 does not reflect any credit upon it. None of the constables on fixed-point duty or patrol duty in any way attempted to prevent the re-hoisting of the flag and the only anxiety shown by P.S.I., Vichare was to contact two Muslim leaders and obtain from them statements to the effect that they did not want any prosecution to be launched. The said statements given by the two Muslim leaders, Hasan Miya Pansare and Abdul Kadir Kablay, show that the local Muslim leaders were not in any way desirous of doing anything which might aggravate the communal situation.
- (5) It was an error of judgment not to have given the sanction to prosecute Bal Thackeray and his associates for entering the disputed structure, breaking a coconut and hoisting a flag there, and sprinkling 'gulal' on the Muslim graves outside.
- (6) The Hindu communal feelings in Mahad became intensified and received an impetus as a result of Bal Thackeray's visit to Mahad on January 17, 1970 and the hoisting of the flag by him, on the disputed structure. As a result, public meetings of the Hindus were held in the Veereshwar Temple and a Temple Committee was formed with the object of constructing a temple on the disputed property, and several leaders of different political parties, such as the Shiv Sena, the Congress, the Jan Sangh and the P.S.P., all came together for the said purpose.
- (7) The communal tension in Mahad became aggravated with the holding of the public meetings of the Hindus at the Veereshwar Temple on January 23, 1970 and January 30, 1970 and with the formation of the Temple Committee.
- (8) In spite of the Home Department's letter dated August 3, 1968 (Ex. G 4) to all D.Ms., Commissioners of Police and Ss.P. about the misuse of places of religious worship for non-religious purposes, the question of allowing such meetings to be held at the Veereshwar Temple was not considered and these meetings were allowed to be held without any let or hindrance.
- (9) The agitation for the construction of a Hindu temple on the disputed property did not succeed and the Temple Committee had to be dissolved only because of the opposition put and the counter-propaganda carried on by S. B. Savant.

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CHAPTER 87

THE SHIV SENA AND THE DISPUTED STRUCTURE— THE LAST PHASE

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CHAPTER 87

THE SHIV SENA AND THE DISPUTED STRUCTURE — THE LAST PHASE

A synopsis

87.1 The third and the last phase of the Shiv Sena activities in relation to the disputed structure opened with the Ratnagiri tour of the Shiv Sena Chief, Bal Thackeray. On February 15, 1970, as the opening scene of the said tour, Bal Thackeray was to visit Mahad, put up an iron flag post on the disputed property and hoist a Bhagwa flag there. He and the Shiv Sainiks who accompanied him were, however, prevented at Kemburli Naka from entering Mahad by service upon them of an order under section 144, Cr. P.C. which prohibited their entry into Mahad. When the said order was served upon them the Shiv Sena leaders threatened, abused and fulminated, but ultimately proceeded on their way without any untoward incident. At each public meeting held in the course of the Shiv Sena, Ratnagiri tour Bal Thackeray and the Shiv Sena leaders declared their intention to defy the ban by visiting Mahad and holding a public meeting there on February 22, 1970. The Shiv Sena contingent, however, returned to Bombay on February 21, 1970 without visiting Mahad.

87.2 Meanwhile by the letter dated February 19, 1970, handed over personally to the Chief Minister by a deputation of Muslim leaders from Mahad, the Muslim Jamaat, Mahad, surrendered the disputed property to the Government. They did so on the advice of S. B. Savant and Mr. A. R. Antulay, the then Minister of State for Education, Law and Judiciary. This completely took the wind out of the sails of the Shiv Sena.

87.3 On February 22, 1970 the said prohibitory order was modified so as not to apply to the areas from Pimpalpar Naka to Shedav Naka, thus leaving the Shiv Sena free to enter Mahad by the S.T. Stand Road and hold a public meeting at the Azad Maidan. A large number of Shiv Sainiks came to Mahad on February 22, 1970, by cars, S.T. buses and trucks, for the said Shiv Sena meeting. A number of Shiv Sena leaders from Bombay came to Mahad in the afternoon, but Bal Thackeray did not accompany them. The Shiv Sena motorcade was stopped at the Kemburli Naka by a strong police force and asked to enter Mahad by the S.T. Stand Road. After venting their irritation, by shouting slogans, at not being allowed to enter Mahad by Gandhari Naka, the Shiv Sainiks finally entered Mahad by the S.T. Stand Road. The Shiv Sena felt that Savant was responsible for the ban on the entry of the Shiv Sena leaders and workers into Mahad on February 15, 1970 and also for depriving them of their strongest plank for

agitation in Mahad, namely, "the Mahikavati issue". Accordingly, a large number of Shiv Sainiks gathered outside Savant's house and started shouting abusive slogans at him. Fearing that some such incident might happen, the S.P. had posted a police party there and further police reinforcements were sent on a telephone call being received from Savant about what was happening outside his house. A number of Congress workers also came on the scene and indulged in abusive counter-slogans, but the Police saw to it that no clash took place between the two groups. A public meeting was held that night at the Azad Maidan at which the speakers attacked Savant.

87.4 In order to counteract the prestige gained by the Shiv Sena by reason of the modification of the said prohibitory order and the propaganda carried on by it against the Congress and himself, Savant wrote a letter dated February 23, 1970 to the Chief Minister complaining about what had happened on February 22, 1970. He also held a private meeting of Congress workers on the night of February 23, 1970 followed by a torchlight procession through the town. On February 27, 1970 he held a public meeting in which he attacked the Shiv Sena and criticized the Police for modifying the said prohibitory order.

87.5 The Shiv Sena had called a 'Mahad Bandh' on March 2, 1970. In order to prevent the call for the 'bandh' from being successful Savant went round the town exhorting the shopkeepers to keep their shops open, but he did not succeed as the shopkeepers were afraid of the consequences if they kept their shops open, particularly as a chemist's shop which had been kept open was stoned. Savant also took up the matter in the Maharashtra Legislative Assembly by tabling a motion and asking several questions. As a result of the counter-propaganda carried on by Savant, the communal friction in Mahad was replaced by a Congress-Shiv Sena friction. In the 22nd March 1970 issue of the Shiv Sena Marathi weekly the 'Marmik' a violent personal attack was made against Savant and street brawls and fights took place between the supporters of Savant and the local Shiv Sainiks.

87.6 After its formation the Mahad Branch of the Shiv Sena monopolized the celebration of all Hindu festivals and on May 7, 1970 it took out a Shiv Jayanti procession in Mahad which was followed by a public meeting presided over by the P.S.P. local leader, Surba Tipnis. This was the first time a Shiv Jayanti procession was taken out in Mahad.

87.7 The last act of the Shiv Sena drama in Mahad took place in the afternoon of May 8, 1970 when the local Shiv Sena leaders and workers spread a rumour that some Muslims had beaten the police constables on duty at the disputed structure and removed the flag which was hoisted there—a rumour which provoked and brought about the communal disturbances.

Intelligence reports on Bal Thackeray's proposed Ratnagiri tour

87.8 By his report dated January 31, 1970 (Ex. G 223) the Deputy Commissioner of Police S.B. I, C.I.D., Bombay, reported to the Home

Secretary that Bal Thackeray was undertaking a tour of the Konkan from February 18, 1970 to February 22, 1970. Thereafter by his report dated February 12, 1970 (Ex. G 226) the D.I.G.(Int.) intimated to the Home Secretary that Bal Thackeray was going to tour, Ratnagiri District from February 15, 1970 to February 22, 1970 to propagate the Shiv Sena ideology and would be visiting Khed, Chiplun, Deorukh, Ratnagiri, Sawantwadi, Kudal, Malwan, Kankavali and Lanja. Information was also received that the Mahad Shiv Sena leaders and workers were going to request Bal Thackeray to hold a public meeting in Mahad and that at that time with the object that the flag hoisted on the disputed structure should not fall off or should not be removed by anyone, an iron flag pole embedded in cement should be put on the disputed property and Bal Thackeray should hoist a flag thereon.

The order banning entry into Mahad

87.9 In view of the intelligence received about Bal Thackeray's proposed visit to Mahad on February 15, 1970 in order to erect an iron flag post on the disputed property and to hoist a flag there, S.P., Khan, by his letter dated February 11, 1970 (Ex. P 1123), after setting out the said information received by him, requested the D.M. Kolaba, to issue an order under section 37 of the Bombay Police Act prohibiting Bal Thackeray, Manohar Joshi, Dattajirao Salvi, Pramod Navalkar, Madhav Bhide and others from entering the disputed property for a period of 15 days from February 17, 1970. On the same day Khan had a discussion with D.M., Savnur in connection with the bandobast to be made for Thackeray's Ratnagiri tour. In the course of the said discussion he recommended that an order banning the entry of Bal Thackeray and his associates into Mahad should be issued (P.W. 97/43/3305). Thereupon by his report dated February 14, 1970 (Ex. P 1124) P.S.I., Vichare intimated to the Taluka Executive Magistrate, Mahad, that Bal Thackeray and his associates were likely to put up an iron flag pole at the disputed site on February 15, 1970 and it was very likely that as a result thereof the religious sentiments of the Muslims might be hurt and enmity might arise between the two communities and there might be a breach of the peace. By the said report he, therefore, requested the Taluka Executive Magistrate to issue an order under section 144, Cr.P.C. in the terms set out in the said letter. Accordingly, Taluka Executive Magistrate Joshi issued on February 14, 1970 an order under section 144, Cr.P.C. as requested (Ex. P 1082). The said order *inter alia* stated:—

“Whereas the P.S.I., Mahad Taluka has reported to me that:—

- (1) Shri Bal Keshav Thakare, Chief of Shiv Sena,
- (2) Shri Manohar Joshi,
- (3) Shri Dattajirao Salvi,
- (4) Shri Madhav Bhide,
- (5) Shri Pramod Navalkar,

along with the followers of Shiv Sena proposed to enter Mahad town within my jurisdiction with a view to erect an iron pole in

Survey No. 196-A/1 (C.T.S. No. 337) of Mahad alleged to be known as 'Mahikawati Temple premises' or 'Jumma Masjid Premises' now in ruins and that this action of Shiv Sena is likely to create ill-will between the Hindus and the Muslims at Mahad and that there is likelihood of disturbances of public tranquility arising out of such action, I, Shri D. C. Joshi, Taluka Executive Magistrate, Mahad, who have been duly authorized under section 144, of the Cr. P.C., am of the opinion that sufficient ground exists for proceeding under this section and immediate prevention or speedy remedy is desirable, I, therefore, order that the following persons:—

- (1) Shri Bal Keshav Thakare, Chief of Shiv Sena,
- (2) Shri Manohar Joshi,
- (3) Shri Dattajirao Salvi,
- (4) Shri Madhav Bhide,
- (5) Shri Pramod Navalkar, etc.,

and/or the public generally are restrained from doing the following acts during the period from 07-00 hours of 15th February 1970 to 20-00 hours of 24th February 1970:—

- (1) entering the area hereinafter mentioned,
- (2) carrying of arms, cudgels, swords, spears, bludgeons, guns, knives, sticks or lathis or any other articles which is capable of being used for causing physical violence ;
- (3) carrying of any corrosive substance or of explosives ;
- (4) carrying, collection and preparation of stones or other missiles or instruments or means of casting of imposing missiles ;
- (5) holding any assembly or procession ;

within the area of Mahad town in Kolaba District (excluding Bombay-Konkan-Goa-Road)."

87.10 One might feel that the said order was too wide in its scope and not justified by the circumstances of the case and that the declared objective of the Shiv Sena of erecting an iron flag pole on the disputed property and hoisting a flag on it could have been avoided by prohibiting the entry of Bal Thackeray and others into the disputed property in such a manner as not to leave scope for violating the order. S.P., Khan has deposed that his reason for recommending the issue of such a wide order was that he felt that merely prohibiting Bal Thackeray from entering the disputed property (which was in the heart of the Muslim locality) was likely to create greater friction than allowing him to enter the disputed property, and accordingly he thought it better in the interest of law and order to prohibit his entry altogether into Mahad (P.W. 97/43/3306). There is force in what Khan has stated but, in my opinion, the same object could have been achieved by banning the entry of the Shiv Sena leaders and their followers into Mahad from Kemburli Naka on the western side and from Pimpalpar Naka on the eastern side, that is, not to make the ban apply to the eastern part of Mahad Town which lies between Pimpalpar Naka and Shedav Naka, thus leaving it free for the Shiv Sena to hold a meeting at the Azad Maidan, just

as was done subsequently on February 22, 1970 by the order Exhibit P 1083 which modified the said order dated February 14, 1970.

The service of the prohibitory order on the Shiv Sena leaders

87.11 S.P., Khan has deposed about the bandobast made by him on February 15, 1970 to prevent the entry of Bal Thackeray and his followers into Mahad (P.W. 97/9/3229). Khan had kept 200 armed S.R.P. men all over the place including in the town. Out of these 200 S.R.P. men he had four cordons of armed S.R.P. men drawn up at a distance of 10 yards from one another at Kemburli Naka to block the passage to Mahad. Behind the last cordon he had kept a road-block of vehicles. Bal Thackeray and the Shiv Sainiks arrived at Kemburli Naka at about 12-30 p.m. What happened at that time is to be found in the evidence of S.P., Khan [P.W. 97/1(11)/3212(6), 9/3228, 22/3234, 29/3239] and D.M., Savnur [P.W. 98/1(22)/3243(6-7)] and in the report dated February 26, 1970 made by Khan to the D.I.G. (Int.) (Ex. G 256). Bal Thackeray's motorcade consisted of twelve cars, two light vans, jeeps, Tempos and S.T. buses hired for the occasion. Bal Thackeray was in a brand new Fiat car. On seeing the police cordons and the road-block at Kemburli Naka, Bal Thackeray and Manohar Joshi got out of their cars. Copies of the said prohibitory order were served upon them by the S.D.P.O., Mahad. On being served with the said order, Bal Thackeray started abusing the police officers and threatened them that he would crush them under the wheels of his car and enter Mahad. He kept on arguing with them for about fifteen minutes, but finding them adamant he and his companions left for Khed taking the Bombay-Ratnagiri Highway announcing that they would visit Mahad on February 22, 1970 and address a public meeting defying the ban. No untoward incident took place and there was no confrontation between the Police and the Shiv Sainiks.

87.12 Kemburli Naka, which is a junction of two roads, namely, the Bombay-Ratnagiri Highway and the road which leads from Kemburli Naka to Mahad, is at a distance of two furlongs from Bunder Naka. There is no habitation at that place (P.W. 97/7/3225, 41/3304). Any confrontation between the Police and the Shiv Sainiks at this spot would not, therefore, have resulted in any loss of property or life. At the highest, it would have only resulted in injury to some Shiv Sainiks suffered by them while being dispersed by the Police. Had, therefore, the same course been adopted on January 17, 1970, a similar result would have followed and Bal Thackeray would not have been able to enter the disputed structure and Mahad would have been spared all the tension and agitation which took place in the wake of the events of the 17th January 1970 and perhaps would have also been saved the communal disturbances of May 8, 1970.

The Ratnagiri tour

87.13 In the course of his Ratnagiri tour Bal Thackeray visited various places in the Ratnagiri District, including Khed, Chiplun,

Savantwadi and Vengurla, and addressed public meetings there. Translations of the relevant extracts from the speeches made at the said meetings are Exhibits P 1114 to P 1117. At the public meeting held at Khed on February 15, Manohar Joshi said that Bal Thackeray had defied the ban under section 144, Cr. P.C. and hoisted the saffron flag on the Durgadi Fort because he was a Hindu. In the course of his speech Bal Thackeray said (Ex. P 1114):

“On our way here we were to visit Mahad. We came across policemen near Dr. Mehta’s residence. There were four rows of them with a jeep barring the way. Which political leader would call for such a large police force? I felt proud. It makes one feel important. Bal Thackeray is coming. The Shiv Sainiks are coming. The road is therefore closed. What a bandobast! I declare now that the tiger, and not a cat, is our symbol. We shall strike back with vengeance if you trample upon our toes The saffron colour is not ordinary. It is the saffron colour of the religion of Shivaji Maharaj. Sant Ramdas had directed all Marathas to muster and to spread the ‘Maharashtra Dharma’. Not protect but spread. Even by forcible proselytization, Islam could not grow. All the same, we should bear in mind that we should not allow ourselves to be converted to the Muslim faith.”

87.14 At the public meeting held at Chiplun on February 16, 1970 Datta Salvi said (Ex. P 1115):

“Whenever Hindu culture and Hindu temples are attacked, the Shiv Sena is willing to sacrifice its life to protect the Hindu culture. We have proved this.”

At the said meeting Manohar Joshi referred to the Durgadi Fort incident and then said:—

“We wanted to go to Mahad the other day for the ‘Darshan’ of the Goddess. The Magistrate served an order prohibiting the entry of Balasaheb Thackeray. This is a great insult. We will want an explanation for this. We are going to that place on the 22nd. we are going to defy the prohibitory orders, if any, on meeting. We have to go with firm conviction and resolve.”

87.15 The Muslims participated in the public meeting held at Savantwadi on February 19, 1970 Bal Thackeray appreciated this fact in the course of his speech. He said that there were many nationalist Muslims but the Shiv Sena would not collaborate with “pro-Pakistani fifth columnist Muslims”. He then referred to Mahad. He said (Ex. P 1116):

“What mischief was committed at Mahikavati? I went there. I told the Muslim brethren and the Hindus that the dispute should be taken to the Court. Both should abide by the Court decision. What is wrong in this? But Shri S. B. Sawant of Congress felt that if this happened the Muslim votes would be lost. I had not gone for getting votes. On the contrary, the Muslims suggested that there should be no temple of Hindus or Muslim religious place but that a statue of Shivaji Maharaj should be erected at the

disputed place. We agreed as Shivaji was our deity but politics crept in when we went to Mahad on the 15th and were confronted by a big contingent of Police at the entrance to Mahad. There were also S.R.P. men and a gas squad. I wondered what the matter was ! We were served with a notice not to enter Mahad. We had no time otherwise we would have shown our strength there and then. We are again visiting on the 22nd. You may impose restrictions under section 144 or even 420 or any other sections. Those Muslims who would accompany us would be ours."

87.16 At the public meeting held at Vengurla on February 20, 1970 (Ex. P 1117) Bal Thackeray once again declared that he would defy at Mahad the ban under section 144, Cr.P.C. as there was a temple there and he was a full fledged Hindu and did not feel ashamed of that fact.

87.17 The reports of the speeches made by Bal Thackeray and the other Shiv Sena leaders appeared daily in the newspapers (P.W. 97/9/3229) and the 17th February 1970 issue of the Marathi daily the 'Loksatta' (Ex. P 1085) contained a news item that Bal Thackeray had resolved to enter Mahad in breach of the said prohibitory order and hold a public meeting on February 22, 1970.

87.18 In the light of these speeches, various rumours began to float around and Savant has referred to them in his affidavit (C.W. 29/1(20)/3252(18-19)]. He has stated:—

"It is rumoured that while at Chiplun on 15th February 1970 Shri Thackeray contacted some high authority in Bombay, probably the Inspector-General of Police, and got a promise that the order would be lifted on 22nd February 1970 to enable him to make a triumphant entry in Mahad that day. One Shri Wagle, a Deputy S.P. from the C.I.D. visited Mahad on 17th February 1970 as a special representative of the Inspector-General of Police and, as the rumour goes, he was asked to make a formal report that the prohibitory order was no longer necessary. These rumours only accentuated the tension in Mahad."

87.19 Though in his affidavit Savant has stated that the rumour which was circulating was that while at Chiplun Bal Thackeray had contacted some high authority in Bombay, probably the Inspector-General of Police, in his letter dated February 23, 1970 to the Chief Minister (Ex. No. 83) complaining about what had happened on February 22, 1970, he has stated that the rumour was that on February 16, 1970, while in Chiplun, Bal Thackeray had contacted the Chief Minister and had received from him an assurance that the said prohibitory order would be modified to allow him to enter Mahad and hold a public meeting.

87.20 The visit of Dy. S.P., Wagle to Mahad, referred to by Savant, was admitted by Khan when he was questioned about it by the Commission (P.W. 97/29/3240).

87.21 Prompt information was given to the Government of the events that were taking place during the course of Bal Thackeray's

Ratnagiri tour by the D.I.G.(Int.) by his two reports both dated February 18, 1970 and his report dated February 19, 1970 and his report dated February 21, 1970 (Exs. G 227 to G 230 and G 234 respectively). In the course of the said Ratnagiri tour, at some of the said meetings and on the road some minor incidents took place which have also been reported by the D.I.G.(Int.) to the Government by his said reports dated February 18, 1970 and February 21, 1970 (Exs. G 228 and 234). One such incident took place on the way from Savant-wadi to Malvan. The driver of an S.T. bus who did not take aside his bus to make way for Bal Thackeray's party, for what the Shiv Sainiks considered a long time, was reported to have been beaten up by a Shiv Sainik. The said bus driver lodged a complaint with the Police (Ex. G 234).

The surrender of the disputed property to the Government

87.22 Meanwhile, as a result of the efforts made by S. B. Savant and the guidance given to the Muslims of Mahad by the then Minister of State for Education, Law and Judiciary, Mr. A. R. Antulay, the communal situation in Mahad changed dramatically and the issue of the disputed property raised by the Shiv Sena, which had led to so much agitation in the town, ceased to be a communal issue.

87.23 By reason of the counter-propaganda carried on by Savant, as mentioned in the preceding chapter, the Temple Committee had failed to achieve its objective and had to be dissolved. In addition to holding a public meeting on January 28, 1970 to counteract the influence acquired by the Shiv Sena on the Hindus of Mahad, Savant also held private meetings at which he advised the Muslims that the wisest course for them to follow would be to hand over the disputed property to the Government for a secular purpose, such as the construction of a garden or the erection of a statue of Shivaji, and that this would totally take the sting out of the Shiv Sena agitation. One of these meetings took place in Shujauddin Kazi's house. Dr. Mrs. Kazi has made some astounding allegations with respect to what Savant did at the said meeting (M.M.W. 1/4/3320). According to her, the said meeting was held on February 15 or 16, 1970 and Savant presided thereat. At the said meeting Savant first suggested that the disputed property should be handed over to the Hindus. The Muslims, who were present, including her husband (except Babu Mopla), did not say anything and appeared to acquiesce in it. Dr. Mrs. Kazi was in her room and she could clearly hear what was being said at the meeting. She thereupon knocked at the door and called out her husband, took him in her room and violently protested against Savant's said suggestion. Those who were in the said meeting overheard her and, therefore, Savant made another proposal, namely, to hand over the disputed property to the Government, She has deposed:

“No one objected to that and I said to myself that how long I was to go on objecting and when the Jamaat was consenting, it was no use my objecting thereto, and therefore I did not say anything.”

According to Savant, he had attended only one meeting at Shujauddin Kazi's house, namely, a meeting which took place either a week prior to or a week after Bal Thackeray's visit on January 17, 1970 and at which about eight or ten persons were present. Savant's evidence with respect to the said meeting is as follows (C.W. 29/50/3442-3):—

“After discussing the tension in the Town, I told them that they should take a practical view of the matter and the best way was to hand over the disputed land to the Government. I have not at any time made any suggestion that the disputed place should be handed over to the Hindus. Some of the persons present said that there were proposals made to them by the local Shiv Sena leaders that if the Mahad Muslims joined the Shiv Sena, Bal Thackeray would allow them to retain the disputed land. I said that it was for them to decide, but in my opinion it would be suicidal for them to do so. There was further discussion and they told me that my suggestion was a good one and they would consult Mr. A. R. Antulay, the then Minister of State for Law, about it. Thereafter we dispersed. I do not know whether Dr. Mrs. Kazi was in the house or not but Shujauddin Kazi did not leave the room during the course of this meeting nor was he called out from the room by his wife.”

87.24 In cross-examination, Dr. Mrs. Kazi said that she had not referred in her affidavit to the said meeting alleged by her in the course of her evidence because a few days later a regular Jamaat meeting was held at which everyone formally agreed to hand over the disputed property to the Government. She was unable to mention who were present at the said alleged meeting because she said that women did not attend Jamaat meetings but from the voices she could make out that in addition to her husband, Savant and Babu Mopla were also present (M.M.W. 1/21/3326-7). When it was put to her that the meeting at her place had taken place in January 1970 in connection with Bal Thackeray's visit, she replied that the said meeting was a different one, held as a result of the dispute raised by Savant by making an application for substituting the Mahad Municipality's name in place of the Muslim Jamaat in the Record of Rights.

87.25 Dr. Deshmukh has also referred to a meeting at Shujauddin Kazi's house, which was attended by Savant. His evidence supports what Savant has said. He has stated (C.W. 32/8/3415-6):

“On the 25th or 26th January 1970 I had been to a visit to a nearby village, namely, Vahoor, I was returning from that visit at about 10 a.m. Shujauddin Kazi's house is on the way to my place and while passing by that house somebody hailed me and called me inside Shujauddin's house. I found a meeting in progress, at which were present Hasan Miya Pansare and S. B. Savant amongst others. There were a number of persons present in that meeting. I felt curious and therefore waited there to see what the meeting was about. I found that the meeting was about the tension in Mahad over the disputed place. Savant was doing the talking. He suggested

that the best way to put an end to the tension was to hand over the disputed place to the Government. Somebody said that they would be willing, but what would happen if a temple were put up there. Thereupon Savant said that he would see that no temple was put up at the disputed place and if there was a proposal to put up the temple, he would take their side and see that no temple was at any time put up. Some persons asked Savant whether he was prepared to give this in writing. Savant replied that he would not be able to put it down in writing. After some time someone from my dispensary came there and called me to the dispensary. When I left, the meeting was still going on. I do not remember whether when I left the meeting Savant joined me or not."

87.26 It is not possible to accept Dr. Mrs. Kazi's allegations. The application of the Mahad Municipality for substituting its name in the Record of Rights for that of the Muslim Jamaat was made on January 19, 1960. The Municipality had dropped the proposal to convert the disputed property into a garden on November 29, 1960. Dr. Mrs. Kazi is not from Mahad. She came to reside in Mahad after her marriage in 1961. She, therefore, could not have been present when a meeting, if any, took place in connection with the Mahad Municipality's said application. Her evidence shows that she bears considerable animus against Savant. According to her, he had misled her husband and given wrong advice to the Muslims of Mahad. She has testified that in 1961 after she came to Mahad she became a member of the Congress, but in 1970 left the Congress because of the attitude of Savant which, according to her, "was and is most un-Congresslike" (M.M.W. 1/22/3327). She has a great grievance that the Muslims of Mahad followed Savant's guidance. She has stated, "The Muslims of the Mohalla always agreed to whatever Savant said" (M.M.W. 1/4/3320). The differences on almost every point between her and Savant are apparent from what she has deposed (M.M.W. 1/16/3325):

"Not only with respect to the disputed site but with respect to almost all points there are two groups amongst the Muslims in Mahad, one S. B. Savant's group and the other of those who are opposed to his policies. I cannot say whether these two groups are from the Muslims residing in the western part of the town. My husband was one of those who was of the opinion that the disputed site should be handed over to the Government. My opinion was quite different but looking to the situation we all agreed that the land should be handed over to the Government for a social or a public purpose such as a free dispensary."

She has unequivocally declared in her evidence that she was against the Muslims parting with possession of the disputed property (M.M.W. 1/4/3330). Finding that Savant's advice was influencing the local Muslims and that they were coming round to his point of view and were about to decide to hand over the disputed property to the Government, she wrote an article which was published in the 17th

February 1970 issue of the Urdu daily the "Aaz" and in the 22nd February 1970 issue of the Urdu fortnightly the "Rehnuma-e-Millad" (Ex. MM 1). The said article contained an attack on the agitation to take over the disputed property for a temple. It is not possible to believe that Savant, who since 1959 was disirous of converting the disputed property into a public garden, should have in 1970 counselled the Muslims to hand it over to the Hindus for erecting a temple, particularly when he was publicly fighting this move and was trying his best to nullify the efforts of the Temple Committee in that behalf.

87.27 On February 1, 1970, the Muslim Jamaat, Mahad, appointed a committee of 25 persons to bring about peace. The said committee held some meetings at which some of the prominent local Muslims, including Shujauddin Kazi and Ebrahim Chichkar, both supporters of Savant, mooted the idea of handing over the disputed property to the Government (M.M.W. 2/6/3383-4). How this idea fructified is to be found in Savant's affidavit. Savant has stated [C.W. 29/1(15-16)/3252(14-15)]:—

"Shri Thackeray raked up biting instances of communal hatred and warned the Muslims to behave well or else leave India. This raised communal hatred among the common people in both the communities to a terribly high pitch. People from both the communities approached me and I told them that this is only a sinister political move. Shri Thackeray who has openly asked the Hindus to kill cows, has no love for traditional Hinduism. He is only trying to create a base for his Shiv Sena in Mahad, while the P.S.P. and the Jan Sangh, who are the real culprits in this affair as they oppose the move of secularization of the site of Mahikavati in 1960, only wanted to use this agitation as a weapon for hitting the Congress and for destroying its secularism. I further told the Hindus that building a temple in an unholy land like a burial-ground is out of the question and that the land can be used for some public purpose with the consent of both the communities. I impressed upon both the communities that emotional approach to this dispute will lead them only into perpetual strife and chaos of social life and so they both should give it up and accept instead a practical approach. I told the Muslims that the land is of no use to them even as a burial-ground because there is no space for burying the dead and that it does not grow even grass and so there is no point in fighting for it. In case the two communities cannot solve the question amicably, the best way would be to hand it over to the Government to whom it originally belonged and even now belongs if the documents are properly interpreted.

"An enlightened section of the Muslims, among whom were the two Muslim persons viz. Shri Shujauddin Kazi and Shri Ibrahimkhan Chichkar who had voted for the Municipality's proposal to create a garden to the memory of Mahikavati in 1960, agreed with me. The lower classes amongst the Muslim, however, could not agree. I, therefore, directed them to Shri A. R. Antulay, the Honourable

Minister in charge of the District, who is himself a Muslim and who is well-read in Muslim theology. He gave the same advice as I did and accordingly on 19th February 1970 the Muslims of Mahad gave a letter to the Chief Minister of the State stating that they were handing over the disputed land to the Government for using the same for a public purpose."

87.28 Shujauddin Kazi has also admitted that the surrender of the disputed property by the Muslim Jamaat, Mahad, to the Government was under the advice and guidance of Savant and Mr. Antulay [C.W. 31/1(8)/3276(5)].

87.29 The names of the Muslims who saw Mr. Antulay in this connection are to be found in the evidence of Abdul Kadir Kablay. Kablay has stated that on February 17, 1970, Bapu Mopla and Ahmedsaheb Dingankar (both, according to Savant, leaders of the fanatical section of the Muslims in Mahad), Hasanmiya Pansare, Umarkhan Chichkar, Kablay himself and one or two others went to village Ambet and saw Mr. Antulay who had sent for them. Mr. Antulay told them that he had sent for them to advise them to hand over the disputed property to the Government, as otherwise there would be Hindu Muslim riots (M.M.W. 3/15/3391-2).

87.30 As a result of Savant's efforts and the advice and guidance given by Mr. Antulay, a meeting of the Muslim Jamaat, Mahad, was held in Desmukh Chowk on February 18, 1970. The 'Bangli' of the Jamaat went from house to house giving notice of the said meeting to everyone. More than two hundred persons attended the said meeting (C.W. 30/3/3271); (M.M.W. 2/2/3381). At the said meeting it was resolved as follows (Ex. MM. 2):—

"As there is a dispute regarding the Jumma Mosque (dilapidated mosque) Survey No. 196 A, Hissa No. 1, City Survey No. 337 Mahad, the said site should be handed over to the Government on condition that a temple or any other thing which will be hurtful to the feelings of the Muslims and the Hindus should not be constructed at that place."

It was further resolved that Shujauddin Kazi, Ibrahim Ahmed Taj, Hasan Shahabuddin Pansare, Alimiya Kamruddin Gantare and Ebrahim Tayyabkhan Chichkar be appointed to go to Bombay in the matter of handing over the disputed property to the Government. As appears from the report dated February 21, 1970 (Ex. G 236) from the D.I.G. (Int.) to the Home Secretary, Shujauddin Kazi, Ebrahim Chichkar, Hasanmiya Pansare and Alimiya Gantare went to Bombay on February 19, 1970 and accompanied by Mr. Antulay and Savant saw the Chief Minister and handed over to him a letter dated February 19, 1970 signed by them. After giving a description of the disputed property from the land records and after mentioning that there was a Muslim graveyard and an old mosque in a dilapidated condition on the said site, the said letter stated as follows:—

"Recently the Shiv Sena has started disputes over the said land, has given it a communal colour and has declared that the temple

of Mahikawati should be constructed at the said place. In order that there should not grow any kind of communal enmity and in order that there should not be breach of the public peace in Mahad, we are giving the aforesaid property in possession of the Government of Maharashtra with a request that the said property may be used for public purposes.

“The Muslim community at Mahad called a meeting on the date the 18th February 1970 and took the decision as above and authorized us to inform you in writing accordingly. For this reason with the consent of all the members of the Muslim community at Mahad and on their behalf we are this day giving to the Government of Maharashtra right of ownership and Vahivat of the said land.” This fact of the local Muslim leaders handling over the letter of surrender to the Chief Minister personally was reported in newspapers and D.M., Savanur came to know about it from reading the papers. Tahsildar, D. C. Joshi also learnt about it from the 2nd March 1970 issue of the Marathi daily the ‘Maharashtra Times’ [P.W. 98/7/3247 ; P.W. 102/1(18)/3359(8)].

87.31 The fate of the original of the said letter of surrender remains a mystery. Apart from its effect or validity in law, this was an important document in that once and for all the said letter cut away the ground from under the feet of those who had turned the disputed property into a burning communal issue and had thereby succeeded in bringing about communal tension and unrest in the town of Mahad. This move left no scope for the communalists to make violent speeches on desecration of Hindu temples and to arouse anti-Muslim feelings. This document should, therefore, have been preserved carefully. But strange to say, when required, it could not be found on the files of the Government. This is clear from the answer given on April 16, 1970 in the Legislative Assembly by Mr. D. S. Desai, the then Minister for Revenue, to a short-notice question put by Savant who wanted to know whether the persons who were in possession of the disputed property had offered to surrender or had surrendered their right of ownership and ‘vahivat’ to the Government. Mr. Desai’s reply was that such a document did not seem to have been received by the Government. Savant, however, persisted and pointed out that the said document had been handed over to the Chief Minister in the presence of Mr. Antulay and himself. Mr. Desai stated that information to that effect had been subsequently received but in spite of the efforts made, the said document was no available (Ex. No. 85). Thereafter the Revenue Department by its letter dated April 11, 1970 asked the D.M., Kolaba, to obtain a copy of the said document. Savanur gave instructions to the Tahsildar, Mahad, to do the needful (P.W. 98/7/3247). The Tahsildar, D. C. Joshi, obtained a copy (Ex. P 1132) of the said document from Shujauddin Kazi who gave it to him without any difficulty. Joshi also made inquiries from some of the Muslims (P.W. 102/4/3362). The result of his inquiries is set out in his report dated April 24, 1970 along with which he forwarded to the D.M., Kolaba,

the copy of the said letter of surrender given to him by Shujauddin Kazi. In the said report he pointed out that the signatories to the said letter of surrender were different from the trustees of the disputed property, the trustees being those whose names were mentioned in the said application for registration of the disputed property under the Bombay Public Trusts Act, 1950; that he had contacted one of the trustees, Sharif Ibrahim Tare, and had recorded his statement, in which Sharif Ibrahim Tare had stated that four Muslims had made an application to the Government surrendering the disputed property, but he did not know the contents thereof nor had he signed thereon; that one of the other trustees, Shahabuddin Pansare, was dead, and the remaining two trustees, namely, Abdul Kadir Kablay and Sharif Miya Havaldar, were not available. In his said report he further stated:

“Thus the trustees are not the signatories of the application and it is learnt that they have objection to surrender the possession of the land.”

87.32 Savanur forwarded to the Government along with his report dated May 2, 1970 (Ex. P 1133) the said copy of the letter of surrender and a copy of Joshi's said report. In the said report Savanur stated:—

“As per provisions of section 55 of the Maharashtra Land Revenue Code, 1966, the occupant has to give notice in the prescribed form to the Competent Revenue Officer. Since the rules under the above-mentioned section are yet to be published such a notice will have to be presented before the Tahsildar in form “L” appended to the Bombay Land Revenue Rules, 1921. In this case, in my opinion, it is necessary that the trustees should present such a notice in the prescribed form. It is however seen that the trustees are not prepared to relinquish the property as will be seen from the Tahsildar, Mahad's report and as such no action in respect of relinquishment of land in question can be taken at this stage.”

In his report Savanur further pointed out that the possession of the disputed property had been taken over by the Circle Inspector, Mahad, as receiver under the preliminary order passed in the proceedings under section 145, Cr. P.C.

The legal validity of the letter of surrender

87.33 The disputed property is an occupancy under the Maharashtra Land Revenue Code, 1966. The occupancy rights could therefore be surrendered or relinquished by the occupant in favour of the State Government. This property is also one of the immoveable properties of the trust registered as “Jumma Masjid Mahad Bunder Padki Masjid Public Trust” under the Bombay Public Trusts Act, 1950. The trustees of this trust were, however, different from the signatories to the said letter of surrender or relinquishment. Under section 55 of the Maharashtra Land Revenue Code, a notice of relinquishment in writing would have to be given by an occupant desiring to relinquish his occupancy rights. Where there are, how-

ever, more than one occupant in respect of the same occupancy, a notice given by one of them would not affect the rights of the other occupants. [See *Lilachand Tuljaram Gujar v. Mallappa Tukaram Borgavi*, (1960) 62 Bom. L.R. 134]. It is obvious from the said report made by the Tahsildar, D. C. Joshi (P.W. 102), that some of the trustees had an objection to relinquishing the disputed property in favour of the Government. Under the law, since the property vested in the Muslim Jamaat, Mahad, all members of the Muslim community, at least of Mahad, have an interest in it. The principle of law is that a majority, however large, cannot bind a dissentient minority, however, small, to do that which is not authorized by the constitution of the body of which they are members. (See Halsbury's Laws of England, Third Edition, Vol. 9, art. 100, p. 51). Unless the constitution of the Muslim Jamaat, Mahad, expressly so provided (which does not appear to be the case), a section of the Muslim community of Mahad, however large, would have no right to relinquish or surrender the disputed property to the Government. The said letter of surrender or relinquishment, therefore, did not have any legal validity.

The effect of the letter of surrender

87.34 The question of the legal validity of the said letter of surrender or relinquishment did not, however, arise at any stage, at least so far as the situation in Mahad was concerned; though the fact that the Government has not till now taken possession of the disputed property in pursuance of the said letter of surrender or relinquishment would show that the Government was aware of the legal difficulty—a difficulty also pointed out by D. M. Savanur and Joshi in their said reports. So far as the general public was concerned, it, however, treated the said letter of surrender or relinquishment as being legally valid. The said letter of surrender or relinquishment gave a death blow to the agitation for constructing a temple on the disputed property and did not leave any cause for communal tension in Mahad. As appears from the speeches made at the public meeting held by the Shiv Sena in Mahad on February 22, 1970 (Ex. P 1084), the Shiv Sena leaders accepted the fact of the surrender and Manohar Joshi congratulated the Muslims for surrendering the disputed property to the Government. It is, however, clear from the speeches made at this meeting and from the events which transpired on February 22, 1970 and later that the Shiv Sena leaders were riled at the termination of a situation so full of potentialities for a communal agitation and they held Savant responsible for it. As a result of this, the communal tension in Mahad was replaced by a Shiv Sena-Congress tension.

The removal of the 'gilaf'

87.35 It is the case of the Muslim parties and of S. B. Savant that in the night of February 20, 1970 the 'gilaf' (the green cloth spread over the tomb in a Dargah day and night throughout the year) in the Shah Bahiri Dargah was stealthily removed and burnt and the slogan

“Bajao Pungi, Hatao Lungi” written on the outer wall of the said Dargah. The Executive Magistrates and the District Police Officers have denied this allegation.

87.36 The Muslim witness who has given evidence on this point is Ebrahim Tayyabkhan Chichkar [C.W. 30/1(11)/3270(7)]. In his cross-examination Chichkar has admitted that he did not know who had removed the ‘gilaf’ or whether it was burnt. He has, however, testified that he had personally seen that the old ‘gilaf’ on the tomb was removed and that a new ‘gilaf’ had been spread over the tomb. He has also testified that he had personally seen the slogan “Bajao Pungi, Hatao Lungi” on the wall of the Dargah (C.W. 30/7/3272-3).

87.37 Further details appear in the evidence of S. B. Savant. Admittedly, the said Dargah is situate in the midst of a Hindu locality, so that it would be much easier to play this mischief than had this Dargah been situate in a Muslim locality. Savant has testified that a Muslim, whose name he did not remember but who was a resident of the locality in which the said Dargah is situate, came to his house in the morning of February 21, 1970 and informed him that the ‘gilaf’ was removed from the Shah Bahiri Dargah. Savant told him to go and make a complaint to the Police. Savant afterwards learnt that the said Muslim had gone to the Mahad Town Police Station but had refused to sign any F.I.R., saying that he did not want to disclose his identity as the complainant, lest he come in trouble. Savant personally did not go to the Dargah to verify the said information, but he ascertained the facts from P.S.I., Vichare who told him that the said information was true, but the Muslim concerned was not prepared to sign the F.I.R. [C.W. 29/1(21)/3252(20), 41-42/3297-8]. The other evidence on the record shows that the Muslim who gave the information to Savant was Umarkhan Abdullakhan Chichkar, the Mujawar of the said Dargah.

87.38 So far as the case of the Executive Magistrates and the District Police Officers is concerned, we have on the record several reports as also the oral evidence of S.P., Khan and P.S.I., Vichare. The earliest report is the one dated February 23, 1970 (Ex. G 252) made by Inspector R. S. Salvi of the State Intelligence. Salvi was directed on February 21, 1970 by the D.I.G. (Int.) to proceed to Mahad to watch the situation and make a special report. He left for Mahad on February 22, 1970 and reached Mahad at about 1 p.m. that day. He moved about in the town and gathered information. He met at Salwad Naka about twenty to twenty-five Muslims, some of whom he knew, and questioned them. From them he gathered information about various matters including about the removal of the ‘gilaf’ (P.W. 107/2-3/3444-5, 6/3448). He has stated in his said report:

“On 20th February 1970 somebody had removed the ‘Chaddar’ from the Shah Bahirshah Dargah near Chaudar Tank. The Urs of the Dargah was scheduled for the 24th and 25th instant, but in view of the above incident and the tension prevailing in the town, it was

abandoned. A complaint of this incident of February 20 was lodged with the Police.”

87.39 Sub-Inspector Haridas of the State Intelligence, S.S.B., Panvel, in his report dated February 23, 1970 (Ex. G 251) has also referred to this incident. He has stated:

“There was a rumour in the town that 2 ‘chaddars’ from the Shah Bhairi Dargah had been removed by somebody on the night of the 20th instant. On enquiries, it was learnt that no case had been registered at the police station in this connection. After making confidential enquiries, it was learnt that Shri Umarghan Abdullakhan Chichkar had seen the P.S.I. at the police station and had informed him that 2 ‘chaddars’ from the dargah had been removed by somebody 2 days back and that they had since been replaced. When the P.S.I. asked him to give a complaint in writing, he said that M.L.A. Shri Sawant had asked him to inform the P.S.I. orally and therefore he had come to merely inform the Police.

“It is said that the above rumour had been spread in order that the Shiv Sena meeting scheduled at Mahad on 22nd February 1970 should not be held and should be banned. None of the leaders of the Muslim community was learnt to have said anything in this matter and no reaction was noticed. I am trying to secure more information.”

87.40 The report dated February 24, 1970 (Ex. G 333) made by S.P., Khan also refers to this incident. This report states:

“There was a rumour that on the night of 20th February 1970, the ‘Chaddar’ at the Shah Bhairi Dargah had been removed. On enquiries made with Shri Chichkar in this connection, it was learnt that M.L.A. Shri Sawant had told him to lodge a complaint regarding the ‘Chaddar’ having been removed. There have been no repercussions amongst the Muslims on this count nor is the situation tense. It is felt that M.L.A. Sawant must have brought about the incident. Since there has been no written complaint in this connection, no offence has been registered. Like the Mahikawati Temple, this Shah Bhairi place too was formerly a Hindu religious place. In old historical times, there was a Shiv Temple. There is a possibility that in the near future, the Shiv Sena might take steps in respect of the Shah Bhairi place and raise the issue.”

87.41 This incident was also reported by the D.I.G.(Int.) in his report dated February 27, 1970 (Ex. G 244) and some further facts emerge from the said report. The relevant portion of the said report is as follows:—

“A rumour was current in Mahad town that two ‘chaddars’ on Shah Bhairi Dargah were missing since the night of February 20, 1970. In this respect, it is learnt that one Shri Umarghan Abdulkhan Chichkar of Mahad had approached P.S.I., Mahad Police Station and told him about the missing ‘chaddars’ and about his putting on it further new ‘chaddar’. Shri Umarghan declined to lodge a complaint saying that he only reported the incident at the instance

of Shri Sawant (M.L.A.-Congress). No complaint has, therefore, been registered at the police station. The Muslim community in Mahad is silent over this incident."

87.42 From the report dated February 27, 1970 (Ex. P 1129) made by the D.M., to the Home Secretary it appears that Umarmkhan Abdullakhan Chichkar was the 'Mujawar' of the Shah Bhairi Dargah. The said report of the D.M. also states that the local Muslims did not give any importance to this incident.

87.43 The last person to make a report about this incident was the one person whom we would have expected to be the first to make a report, namely, P.S.I. Vichare. His report made to the S.P. is dated March 10, 1970 (Ex. P 1161). This report requires to be set out *in extenso*. It stated:

"No news has spread in Mahad town to the effect that somebody removed the 'Chaddar' from the Shah Bahiri Durgah of Mahad on the night between the dates 20th February 1970, and 21st February 1970. But I learnt that some 1 or 2 Muslims gave that information to Shri Savant the M.L.A. from Mahad in the morning on the date 21st February 1970. Then I made careful inquiries in the town but I learnt that there was no truth in that matter and that the news was false. I learnt that somebody had spread that news with the object that there should be some adverse effect on the Shiv Sena meeting to be held at Mahad on the date 22nd February 1970. I myself went to the Shah Bhairi Dargah and looked there but I found that the usual 'Chaddar' was there on the Dargah.

"Your Honour came to Mahad at dawn on the date 22nd February 1970. As it was learnt that at about that very time some Shiv Sena vehicles had come to the Stand at 5-30 a.m. and as I was ordered by the S.D.P.O., Mahad to go there immediately for bandobast, I went there for bandobast. After finishing the work of bandobast over there, I went to see Your Honour. As some other persons and officers and others had collected there at that time and as I was under pressure of work regarding the bandobast, I forgot to inform Your Honour about the said fact through oversight.

"I have made inquiries in the town in that behalf secretly. But neither has any such thing taken place nor do the people in the town have any idea about it. There has been no adverse effect on the people about it and no rumours to that effect have spread in the town. No such rumours have spread among the people. This appears to be a stunt made by somebody. That has made no effect whatsoever upon the people."

87.44 The statement in Vichare's said report that such rumours had not spread in the town is falsified both by his affidavit and his oral evidence as also by the other reports referred to above. In his affidavit Vichare has stated [P.W. 101/1(10)/3336(2-3)]:

"On 21st February 1970, I heard that there was a rumour in the town that the 'Chaddar' on the tomb at the Shah Bahiri Dargah was missing. I visited the Dargah and noticed that the covering was

there in its place. There were also no writings on the wall. No further action was taken in the matter as there was no complaint." In cross-examination he has deposed that on February 21, 1970, while he was going to the police station from his residence, one or two Hindus as also a Muslim named Chichkar told him that the 'gilaf' had been removed from the tomb in Shah Bahiri Dargah and that he asked Chichkar to go to the police station and lodge a complaint, but Chichkar replied that he did not want to lodge any complaint and that he had informed Savant who had asked him to tell Vichare (P.W. 101/8/3342).

87.45 The careful inquiries in the town which, according to his report, Vichare had made and from which he had learnt that the news about the removal of the 'gilaf' was false, boiled down in cross-examination to his going to the Shah Bahiri Dargah to see whether the 'gilaf' was there or not. The logical process by which he deduced that said news was false has been deposed to by him as follows (P.W. 101/22/3357):—

"The only reason why I say that the 'gilaf' was not removed on February 20, 1970 was that when I went there after learning about it, I found that the 'gilaf' did not appear to be a new one but appeared to be an old one."

87.46 The truth of the matter appears to be that as had happened previously when the Muslims declined to lodge a formal complaint, in this case also when Umarmhan Chichkar refused to give an F.I.R.. Vichare did not do anything in the matter. Savant does not appear to have been a popular figure with the police officers either in Mahad or in the Kolaba District. Perhaps as an M.L.A. he had thrown his weight about too much. The fact that Umarmhan Chichkar mentioned Savant's name could have led some of these police officers to infer that Savant, in order to bring pressure not to modify the ban on the entry into Mahad and thus prevent the Shiv Sena from holding a meeting, had engineered this rumour. We have the direct testimony of Ebrahim Chichkar (C.W. 30) on this point whose evidence I certainly prefer to that of Vichare who could be no judge of 'gilafs'. It must also be borne in mind that at that time, there was a panic amongst the Muslims in view of the threat repeatedly given by the Shiv Sena leaders that on February 22, 1970 they would defy the prohibitory order under section 144, Cr. P.C. and address a public meeting in Mahad. If the Shiv Sainiks had done so and had there been a clash between the Police and the Shiv Sainiks, this would have certainly led to riots in the town in which the Muslims would have been the greater sufferers. This fear made several Muslims families leave Mahad. In incident after incident, in order not to aggravate the communal situation in Mahad, the Muslims have refused to lodge a formal complaint. It is, therefore neither strange nor surprising that in the atmosphere of tension and panic prevailing in Mahad at that time, Umarmhan Chichkar should have refused to lodge a formal complaint and thus reveal his identity and thereby become a target of attack.

87.47 That the said incident did not lead to panic amongst the Muslims as alleged in some of the reports also does not appear to be correct, for as is shown by Inspector Salvi's said report (Ex. G 252) the Urs of the Shah Bahiri Dargah, which was scheduled to be held on February 24 and 25, 1970, was cancelled. The said report is dated February 23, 1970. The information mentioned in it was gathered by Salvi on February 22, 1970 when he had visited Mahad. This shows that not only did the news about the said incident immediately spread in the town but that caused the Muslims to believe that there would be serious trouble at the time of the said Urs were it held and thus made them abandon this Urs as a safer and more prudent course.

The return to Bombay and the halt at Shedav Naka

87.48 Notwithstanding the threats repeatedly given during the course of the Ratnagiri tour to return to Mahad on February 22, 1970 and address a public meeting in defiance of the prohibitory order under section 144, Cr. P.C., Bal Thackeray returned to Bombay on February 21, 1970. On that day, he had addressed a public meeting at Malvan. In the course of his speech, he said that he had been called to Bombay for urgent talks and, therefore, he was immediately returning to Bombay from Malvan cancelling his further programme. He left Malvan for Bombay after midnight (Ex. G 234). At the Shiv Sena meeting held at Mahad on February 22, 1970, Manohar Joshi sought to excuse Bal Thackeray's absence on the ground that his presence in Bombay was essential as there was a meeting of the opposition leaders over some important issues such as the Maharashtra-Mysore boundary issue.

87.49 At about noon on February 21, 1970, Bal Thackeray and his motorcade came near Mahad and stopped for a while near Shedav Naka, the eastern approach to the town of Mahad. Tahsildar Joshi was present at Shedav Naka along with Vichare and some S.R.P. men and he has deposed about what happened at that time. On seeing the police party Bal Thackeray remarked that there was no necessity for so much police bandobast and inquired from Joshi whether orders from higher authorities had not yet been received. By this he was referring to the orders to modify or lift the ban under section 144, Cr. P.C. Joshi replied in the negative, whereupon Bal Thackeray stated that somebody was playing mischief. He, along with the others, then proceeded to Bombay [P.W. 102/1(11)/3359(5), 8/3365].

87.50 The above remarks of Bal Thackeray, deposed to by Joshi, show that there was some truth in the rumour that while he was at Chiplun, Bal Thackeray had contacted some highly placed person in Bombay in connection with the lifting of the ban on the entry into Mahad.

The Muslim reaction to the forthcoming Shiv Sena visit of the 22nd February

87.51 To protest against the prevention of its entry into Mahad on February 15, 1970 the Shiv Sena called a Mahad 'bandh' on

February 22, 1970 to synchronize with the public meeting to be held by it on that day. The repeated threats held out in the course of the Ratnagiri speeches, which were reported in newspapers, to enter Mahad on February 22, 1970 in defiance of the ban and the incident of the removal of the 'gilaf' of the Shah Bahiri Dargah appears to have caused considerable panic amongst the Muslims of Mahad. They apprehended violence and riots in which they, by reason of their being in a small minority in Mahad, would be the greatest sufferers. Several Muslim families, therefore, left Mahad. According to Ebrahim Chichkar, they did so because they were panic-stricken by the incident of the removal of the 'gilaf' from the Shah Bahiri Dargah and the writing of the slogan "Bajao Pungi, Hatao Lungi" on the outer wall of the said Dargah and because "they had lost faith in the ability of the Government to protect the Muslims against the marauders of Shiv Sena". He estimated the number of Muslims who so left the town as about forty or fifty [C.W. 30/1(12)/3270(7), 4/3272]. Shujauddin Kazi has also deposed to this fact [C.W. 31/1(8)/3276(6)]. Savant has also stated that many Muslims left Mahad with their families on February 21, 1970. In cross-examination he has further stated that Muslim families residing in Hindu localities, such as near Gadhi Tal, particularly Kutchhis, left *en masse*, while only some of the Muslims in Muslim localities left Mahad. He was informed that Dr. A. A. Deshmukh had also left Mahad (C.W. 29/1(21)/3252(20), 43/3298). It was, however, not Dr. Deshmukh who had left Mahad but his wife who had gone to Bhiwandi for four or five days to her father's house. Dr. Deshmukh has deposed, "I do not know whether my wife left for Bhiwandi out of fear. I, however, personally was not afraid" (C.W. 29/11/3417). It is difficult to believe that Dr. Deshmukh would not know whether his wife had left Mahad out of fear or for some other reason. This answer of his is in consonance with some of his other answers where he refused to get himself involved in controversial topics.

The modification of the prohibitory order

87.52 On February 22, 1970 the prohibitory order dated February 14, 1970 (Ex. P 1082) was modified by Joshi, the Taluka Executive Magistrate, by another order dated February 22, 1970 (Ex. P 1083) made under section 144, Cr.P.C. The said order stated:—

"I, Shri D. C. Joshi, Taluka Executive Magistrate, Mahad, hereby vacate the ban imposed for Mahad town in respect of the area from Pimpalpar Naka to Shedav Naka only of Mahad town."

The modification of the said ban left the Shiv Sena free to enter Mahad by the S.T. Stand Road and to hold a public meeting at the Azad Maidan.

87.53 It is the case of S. B. Savant that the said ban was modified under the instructions of some highly placed personage and though, according to Savant, issuing an order of such wide scope as the said order dated February 14, 1970 (Ex. P 1082) was a mistake, modifying it in the face of the threats given by the Shiv Sena leaders to defy the

ban was even a greater mistake as it lowered the prestige of the administration and enhanced the prestige and reputation of the Shiv Sena and its Chief. In the public meeting held in Mahad on February 22, 1970 all the Shiv Sena leaders emphasized the fact that the Shiv Sena would have defied the ban and held a public meeting at Mahad, but for the fact that in the meantime the Government had lifted the ban.

87.54 We have already seen while dealing with the speeches made by the Shiv Sena leaders in the course of the Ratnagiri tour that while they were as Chiplun on February 15, 1970, there were rumours in the town that Bal Thackeray had contacted on the telephone some high authority in Bombay and had got a promise that the ban would be lifted to enable him to come to Mahad on February 22, 1970 and hold a public meeting. Savant has referred to this rumour and has further stated that Wagle, a Dy. S.P. from the State Intelligence, had visited Mahad on February 17, 1970 as a representative of the I.G.P. and the rumour in the town was that he was asked to make a formal report that a prohibitory order was no longer necessary. S.P., Khan has admitted the visit of Dy. S.P., Wagle (P.W. 97/29/3240). It is clear that Khan had the prohibitory order dated February 14, 1970 issued on his own initiative. In his report dated February 16, 1970 to the D.I.G. (Int.) (Ex. G 256) Khan has referred to Bal Thackeray's threat to return to Mahad on February 22, 1970 on his way to Bombay. In the said report he has stated:

“ Thus in all about one thousand to twelve hundred Shiv Sainiks will be present for the programme of the 22nd at Mahad and for defying the prohibitory order. It is, therefore, requested that at least four S.R.P. companies and 6-12 gas squad may be sent for maintenance of law and order.”

By his report dated February 19, 1970 (Ex. P 1128), D.M., Savanur apprised the Government of the said request made by the S.P. to the D.I.G. (Int.).

87.55 By his wireless message sent on February 19, 1970 to the I.G.P. (Ex. G 259), Khan stated that Bal Thackeray was going to defy the ban at Mahad on February 22, 1970 and that the Shiv Sainiks were proceeding towards Ratnagiri every day since February 15, 1970 and that it was likely that many Shiv Sainiks from Bombay might also come to Mahad in trucks. He, therefore, requested for instructions to the State Traffic Sub-Inspectors to check until February 23, 1970 the unauthorized carrying of Shiv Sainiks in trucks at Wadakhel on the Bombay-Mahad Road and at Poladpur on the Ratnagiri-Mahad Road. Khan's said report (Ex. G 256) and wireless message show that Khan was determined to enforce the said prohibitory order under section 144, Cr. P.C. issued on February 14, 1970. By his letter dated February 21, 1970 (Ex. G 260) the I.G.P. issued to the S.P., State Traffic Branch, Bombay, instructions as requested by Khan.

87.56 In the light of these facts, it is strange that suddenly on the very day on which the Shiv Sena, according to its threats, was to

hold a public meeting in defiance of the ban, the very day on which it had called a "Mahad Bandh", the said prohibitory order should have been suddenly modified to allow the Shiv Sena to carry out its intention of holding a public meeting at the Azad Maidan. Khan and Savanur have sought in their evidence to explain the reasons for this modification. While answering questions on this point they both seemed so embarrassed and awkward that it was obvious that they were not telling the true facts, but were seeking to hide them. The reason given in Khan's affidavit for modifying the said prohibitory order is that it was learnt from Dr. Baburao Mehta that the plan of proceeding to the disputed property to erect a flag post or for any other purpose had been dropped and that the Shiv Sena intended only to hold a public meeting at the Azad Maidan on February 22, 1970 [P.W. 97/1(12)/3212(7)]. In cross-examination Khan has deposed (P.W. 97/44/3306-7):

"From February 18, 1970 to February 21, 1970 there was a conference in Bombay of all Ss.P., D.I.Gs. and other officers belonging to the Indian Police Service in the State. It was a routine annual conference. The main subject of this conference was law and order, and accordingly I discussed the law and order situation in Mahad including the incident of February 15, 1970 with most of the officers who were more experienced than I am. I was not given any instructions with respect to the prohibitory order Exhibit P 1082. I returned to Mahad on February 22, 1970 at 3 a.m. I went to Mahad straight from Bombay. In the morning I sent for Dr. Baburao Mehta. I had a discussion with him, in the course of which he told me that the Shiv Sainiks only wanted to hold a meeting at the Azad Maidan and had no intention of going to the disputed site and that they would abide by whatever restrictions would be laid down, including on the route to be taken by them, and that he would personally ensure that the Shiv Sainiks behave themselves. It is not true that Dr. Baburao Mehta told me that unless the ban on Shiv Sena leaders was lifted, they would defy the ban. I had not sent for Dr. Baburao Mehta alone. I had sent for other local leaders also. My conversation with Dr. Mehta took place before the others came and when the others came I explained to them what the position was. S. B. Savant was not present in the room when I talked with Dr. Mehta. He might have been outside on the verandah. I do not remember how many individual leaders I had sent for and how many came on their own, but I had sent for responsible local leaders to take an undertaking from them that their respective parties would behave themselves. This meeting was at the Inspection Bungalow. S. B. Savant, when he saw me, asked me about the rumour as to cancellation of the prohibitory order. I replied that it was being modified. I do not now remember what exactly Savant said, but he might have said that why was the order being modified when the tension was so high. He was vehemently protesting against the modification of the prohibitory order. It is

not true that I told S. B. Savant that 'I am helpless. I have to obey the orders of my superiors.'

Though Khan has deposed that he had "sent for responsible local leaders to take an undertaking from them that their respective parties would behave themselves", no written undertaking was obtained either from Dr. Baburao Mehta or from anyone else.

87.57 Savanur has stated in his affidavit [P.W. 98/1(23-4)/3243(7)]:

"... on 22nd February 1970 necessary police bandobast was kept to meet the situation. I myself and my Additional District Magistrate visited Mahad on the morning of 22nd February 1970 to supervise the bandobast. But Shri Bal Thackeray dropped the idea and did not turn up on 22nd February 1970.

"Since Shri Thackeray dropped the idea of coming to Mahad and as the situation called for some change in the order under section 144, Cr. P.C. promulgated by the Taluka Executive Magistrate, Mahad, it was partially modified. The ban on entering the town via the disputed property was kept intact and the entry via the S.T. Stand which was quite safe was available, as we could handle the situation effectively and the public peace and order could be maintained."

87.58 Thus, the explanation given in Savanur's affidavit differs from that given by Khan in his affidavit. According to Khan, it was the change of plan by the Shiv Sena whereby it was decided to hold a public meeting only and not to go to the disputed property which led to the modification of the said prohibitory order. According to Savanur, it was Bal Thackeray dropping the idea of coming to Mahad that led to the modification of the ban. Realizing this, in the witness-box, Savanur improved upon the reason given in his affidavit when questioned by the Commission. He stated (P.W. 98/4/3245-6):

"On the morning of February 22, 1970 the S.P. and I had a discussion about the changed situation. Originally Bal Thackeray intended to hold a public meeting at the disputed structure. We, however, reliably learnt that he had given up this idea and he was not going to come to Mahad and that only a public meeting was to be held that evening at Azad Maidan, which is at a distance of about six furlongs from the disputed structure and the Muslim locality. We therefore decided that in view of these circumstances it would be sufficient if we modified the order Exhibit P 1082 so as to ban the entry of the Shiv Sena people into the disputed structure and the Muslim localities. The P.S.I., Mahad, also made a report dated February 22, 1970 to the Taluka Executive Magistrate, Mahad Taluka, requesting him to modify the order Exhibit P 1082. Accordingly the Taluka Executive Magistrate issued an order of modification dated February 22, 1970 (Exhibit P 1083). The information I have referred to above was given to me by the S.P. only. I do not remember whether between February 14, 1970 and February 22, 1970 I had gone to Bombay. If I have made this visit, it will be

found recorded in my diary which is at Alibag. I knew about the threats given by Bal Thackeray in the various speeches he made in Ratnagiri District."

Savanur's diary was produced the next day and it showed that between February 14, 1970 and February 22, 1970 he had not gone out of the Kolaba District and had not visited Bombay (P.W. 98/11/3249).

87.59 The Taluka Executive Magistrate, D. C. Joshi, was the official under whose signature the said order modifying the ban was issued. He has also in his affidavit set out his reasons for modifying the ban. He has stated in his affidavit [P.W. 102/1(12)/3359(5-6)]:

"The Police Sub-Inspector of Mahad made a report on 22nd February 1970 for partial modification of the prohibitory order issued on 14th February 1970 under section 144, Cr. Procedure Code and accordingly on examining the situation prevailing in the town, the ban was partially vacated from 22nd February 1970 morning and onwards so far as the area from Pimple Par Naka to Shedav Naka of Mahad town was concerned. Circumstances under which the ban was partially lifted are as under:—

- (1) that the Muslim locality was safe and away from the Azad Maidan which is at a distance of about six furlongs from Mahikawati,
- (2) and mainly that the meeting was not to be held near Mahikawati premises which is near Muslim locality but it was to be held at Azad Maidan which is at a distance of about 6 furlongs from Mahikawati premises."

In cross-examination he has deposed (P.W. 102/12/3367-8) :

"The order dated February 22, 1970 (Exhibit P 1083) was issued by me between about 9 a.m. and 10 a.m. on the 22nd February. On that day Shiv Sainiks from outside Mahad began coming into Mahad from noon onwards. When I modified the order Exhibit P 1082 I had not expected so many Shiv Sainiks to come to Mahad. I had heard talks in the town that Bal Thackeray and the other Shiv Sena leaders had threatened that they would come to Mahad in large numbers and defy the ban. I consulted the D.M. about this rumour which was going round the town. The D.M. did not give me any direction or advice in the matter. Because the P.S.I. made a report to me requesting that the order Exhibit P 1082 should be modified, I modified it. I had also come to learn that a meeting was to be held at Azad Maidan only. This information was given to me only by the P.S.I. Independently I did not come to learn about this. The only materials on which I assessed the situation were the report of the P.S.I. and the information given by him to me. I had the discussion with the D.M. in the morning of February 22, 1970. The information P.S.I., Vichare (P.W. 101) gave me was after I had finished my talk with the D.M. During the course of my discussion with the D.M. we considered that in case the Shiv Sena public meeting was held at a safe place, that is, away from the disputed place,

it would be safe for us to modify the order. I do not remember whether I broached the topic of modifying the order or the D.M. did so. It did not strike either one of us that the public reaction might be that the administration had succumbed to the threats of the Shiv Sena. Apart from modifying the order, we did not consider any other possibility.”

He has further deposed that the discussion which he had with the D.M. was at the Inspection Bungalow and that D.I.G.(B.R.), Gokhale was also at the Inspection Bungalow at that time, but was not present at their discussion, and that the D.M. did not tell him that he had had a talk with the D.I.G.(B.R.) or the S.P. about modifying the said prohibitory order (P.W. 102/13/3369).

87.60 Thus, according to Joshi, he modified the ban as a result of the report received from P.S.I., Vichare. Vichare's said report is dated February 22, 1970 (Ex. P 1125). It requires to be set out *in extenso*. It is as follows:—

“Under Your Honour's No. M.A.G.V.S.-4-1970 dated February 14, 1970, a prohibitory order under section 144 of the Criminal Procedure Code has been promulgated and that is to be in force in Mahad Town from the date February 15, 1970 to 24 hours at night on the date February 24, 1970.

“Therefore, it is requested that the ban against entry into Mahad Town from Kemburli Naka to Pimpalpar by the road on the western side coming to the area Pimpalpar to Raigad road may be retained and the ban against entry into Mahad by other roads may be lifted and the way may be kept open.”

It will be noticed that the only reason set out in the said report (if at all it can be called a reason) was that the said prohibitory order was to be in force until “24 hrs. at night on the date February 24, 1970”. Thus, no attempt has been made in the said report to set out even the semblance of a reason or to show how the situation had changed in order to justify the modification of the ban. It is obvious that neither Vichare nor Joshi at any time exercised any independent judgment or discretion in the matter and that after everything had been agreed upon, Vichare was asked by the senior officers to make a report so that it could be on the files to complete the record.

87.61 D.I.G.(B.R.), Gokhale had attended the conference of the D.I.Gs. and the Ss.P. held at Bombay from February 18, 1970 to February 21, 1970. He has deposed (G.W. 4/47/3373-4):

“During this period I discussed with the I.G.P. and the S.P. about the law and order situation in Mahad with reference to the incident of February 15, 1970. When I had asked the S.P. what had happened on the 15th February, he had told me that when the order Exhibit P 1082 was served on Bal Thackeray, he had threatened to defy the order. I had also heard that in the public speeches made by him in Ratnagiri District he had threatened that he would defy the order. I did not discuss with the I.G.P. and the S.P. how to deal with his threats. I told the I.G.P. what I had learnt from the S.P.”

87.62 D.I.G.(B.R.), Gokhale went to Mahad on February 22, 1970. His evidence with respect to what he did in connection with the modification of the said prohibitory order is as follows (G.W. 4/45/3373):—

“When I was informed that the local Shiv Sena leaders had given the D.M. and the S.P. to understand that their programme was to hold a meeting in Azad Maidan only, I did not ask them whether the local Shiv Sena leaders had conveyed this to them in writing. I did not tell the D.M. and the S.P. that it was improper to modify the order when Bal Thackeray was giving threats because I did not think it was all that improper. They were the persons on the spot to judge the situation. I had not given any instructions about modifying the order.”

According to Dr. Baburao Mehta, he was sent for and had met the D.M., the D.I.G.(B.R.), the S.P. and other officers at the Inspection Bungalow some time in the afternoon and had discussed the situation with the D.M. and had assured him that there was not going to be any trouble in Mahad and that there was tension in the town only because of the promulgation of the said prohibitory order (C.W. 46/9/3959).

87.63 It is inconceivable that though in the course of the conference in Bombay, D.I.G.(B.R.), Gokhale had discussed with the I.G.P. and Khan about the law and order situation in Mahad with reference to the incident of February 15, 1970 and had learnt about the threats to defy the ban held out by Bal Thackeray in the speeches made by him in the course of the Ratnagiri tour, Gokhale (in whose range the Kolaba District came) did not discuss with the I.G.P. and S.P., Khan how to deal with these threats. It is equally inconceivable that had the conversation alleged by Gokhale actually taken place between him and the D.M. and the S.P., Gokhale would not have asked the D.M. or the S.P. whether the local Shiv Sena leaders had given their assurance in writing or would not have discussed with them the question of the advisability of modifying the ban. He was the superior of the S.P., the Kolaba District was under his range, and he certainly could not have visited Mahad only as a passive spectator of what his subordinates were doing. It is equally inconceivable that with the humiliating experience of January 17, 1970 so fresh in their minds, these senior officers should, so naively and without anything more, accept mere oral assurances of the local Shiv Sena leaders.

87.64 All the official witnesses who have given evidence on this point have sought to evade it and it was clear from their demeanour that they were not willing to tell the truth. All these officers (except Savanur) were afraid that were they to speak the truth their future prospects in the service might be affected, and Savanur, who had retired by the time he came to give evidence, was motivated by loyalty to the administration. The meeting with the local leaders held by the officers on the morning of February 22, 1970 was just a show. The decision to modify the said prohibitory order had by that time been already taken. It was taken at Bombay and not at Mahad. It was

taken not by the officers on the spot — not by the D.M. or the D.I.G. (B.R.) or the S.P. or the Taluka Executive Magistrate or the P.S.I. in charge of the local police station — but by someone whose direction, even though oral, these officers dared not disobey.

87.65 As mentioned earlier, Inspector R. S. Salvi of the State Intelligence was specially sent to Mahad by the D.I.G. (Int.) on February 22, 1970. In his report dated February 23, 1970 (Ex. G 252) he has stated:

“During my personal enquiries at Mahad, I learnt that ever since Thackeray broke the coconut and planted the flag, the atmosphere in the town was disturbed and relations between the two communities became distrustful. People of both the communities feel that the situation would have remained peaceful had section 144, Cr. P.C. not been applied on 15th instant. The ‘bandh’ programme and ‘hartal’ was more a result of fear of terrorism since the people did not want a repetition in Mahad of what happened in Bombay last year and therefore they closed down their shops. Shri Sheth (a merchant) kept his shop open for some time but ultimately he had to close it down through terrorism. The Shiv Sainiks forced him to close it. A number of persons in the Muslim locality near Salivada closed their houses and sat together. Some persons were learnt to have sent their families to nearby villages as at the time of Shri Thackeray’s first visit to Mahad, the Shiv Sainiks while leaving the town had given slogans of ‘Balasaheb Thackeray Zindabad’ and ‘Sale Landeko Kat Dalo’ (‘Cut down the Muslims’).”

87.66 A reason for the modification of the ban was offered on the floor of the House by Mr. K. P. Patil, the then Minister of State for Home and Labour, on March 26, 1970 in answer to questions put by Savant (Ex. No. 84). To the question, “Is it true that after the said order was altered, a very tense atmosphere was created in Mahad Town on the date February 22, 1970?”, Mr. Patil replied, “When the orders under section 144, Cr. P.C. were in force in the entire Mahad Town, the situation in Mahad was tense. However, when partial modifications were made in the order, the tense situation eased”. Savant then asked a further question, namely, “It is stated in the answer that the atmosphere in Mahad was tense but when partial modification was made in the order, the tense atmosphere eased. Does it mean that the Shiv Sainiks who had become annoyed calmed down?” Mr. Patil replied, “You can take any meaning”. Savant then persisted with another question, namely, “Is it the policy of the Government only to calm down the Shiv Sainiks?” As the translation of the relevant extracts from the proceedings of the Maharashtra Legislative Assembly for March 26, 1970 (Ex. No. 84) show, there was no answer to this question. The Minister’s replies speak for themselves.

87.67 Undoubtedly, the people of Mahad were afraid of the violence that might have resulted had riots broken out in Mahad as a result of any action on the part of the Shiv Sena. The question,

however, is, 'was the administration also afraid of such violence and whether this was the reason for getting the ban modified?' One wonders what connection there was between Bal Thackeray cutting short his Ratnagiri tour and not personally going to Mahad and the ban being modified. One wonders whether this was some kind of arrangement arrived at with a two-fold object, one of saving the administration from a very serious law and order situation which might have arisen in Mahad or as a repercussion, in other towns, including Bombay, if the Shiv Sena were balked of its design to hold a public meeting in Mahad, and the other of saving the Shiv Sena Chief from loss of face. Assuming the prohibitory order promulgated on February 14, 1970 was too wide in its scope and the same purpose could have been served by banning the entry of the Shiv Sena Chief and others from Kemburli Naka on the western side and from Pimpalpar Naka on the eastern side, it is still debatable whether in the light of the repeated threats given by the Shiv Sena leaders, which were given so much publicity, the ban under section 144, Cr. P.C. should have been modified with all its attendant loss of prestige for the administration and the lowering of public confidence in the ability of the authorities to uphold law and order in the face of threats of violence and terrorism, leading the people to believe that only violence or threats of violence would achieve any objective and produce results.

The incidents of February 22, 1970

87.68 Bal Thackeray did not go to Mahad on February 22, 1970, but the Shiv Sena leaders, Manohar Joshi, Datta Salvi and Dr. Hemchandra Gupte, went from Bombay to Mahad in cars on February 22, 1970. They were accompanied by a convoy of Shiv Sainiks who proceeded in trucks and other vehicles. On the way, there was trouble at Kausa, situate at a distance of about twenty-five miles from Bombay. When the Shiv Sainiks reached Mahad, they wanted to enter Mahad from the Kemburli Naka. They were not allowed to proceed by a strong police force which was posted there. The Shiv Sainiks waited there till about 5 p.m. when the other Shiv Sena leaders, Arun Mehta and Pramod Navalkar, came there. They then proceeded further and entered Mahad by the S.T. Stand Road. At Mahad an incident took place outside S. B. Savant's house and a serious riot might have taken place but for the fact that a strong police party arrived there in time. Thereafter at about 9-15 p.m. a public meeting was held at Azad Maidan at which the Shiv Sena leaders attacked Savant in their speeches. The next morning the Shiv Sainiks left for Bombay. In the affidavits filed on behalf of the Executive Magistrates and the District Police Officers, the incidents of February 22, 1970 were sought to be considerably underplayed and but for the persistence of Savant, a number of facts would not have come to light and a number of documents would not have been brought on the record. The controversy between the Executive Magis-

trates and the District Police Officers and Savant centres mostly round three points, namely, (1) the Shiv Sainiks coming to Mahad in trucks, (2) the incidents that happened outside Savant's house, and (3) the adequacy of police protection given to Savant. The incidents of February 22, 1970 will now be discussed in detail.

The Kausa incident

87.69 Kausa is a village situate in the Thana District, about twenty-five miles from Bombay with a considerable Muslim population. The incident which took place at Kausa on February 22, 1970 was a sequel to an altercation which the Shiv Sainiks had near that village with a cart-man while returning to Bombay on February 21, 1970. A report dated February 23, 1970 (Ex. G 265) was made by P.S.I., G. S. Deshpande of State Intelligence. Thana (P.W. 60) to the D.I.G. (Int.) about this incident. This incident was also reported by the D.I.G. (Int.) to the Home Secretary by his report dated February 23, 1970 (Ex. G 239). A note on the incidents which took place at Kausa, Mahad and Wadkhal in connection with the notice given by S. B. Savant for a discussion in the Maharashtra Legislative Assembly was prepared by S.P., V. K. Saraf of the State Intelligence and forwarded along with his letter dated March 12, 1970 (Ex. G 247). Following the incidents which took place at Kausa on February 22, 1970, several other incidents took place at Mumbra and other places. These have been set out by P.S.I., G. S. Deshpande in his report dated February 23, 1970 (Ex. G 266) and in the two reports both dated February 24, 1970 (Ex. G 241 and G 242) and the report dated February 25, 1970 (Ex. G 243) from the D.I.G. (Int.) to the Home Secretary and in S.P., Saraf's said note (Ex. G. 247).

87.70 From the said reports it appears that on February 21, 1970 at about 4 p.m., one Abdulla Badruddin Dhole of Kausa was proceeding in his bullock-cart, when a car flying a Bhagwa flag and containing Shiv Sainiks who had accompanied Bal Thackeray on his Ratnagiri tour, came from behind. The cart-man could not give a clear passage to the said car as the road was under repair. Thereupon the passengers in the car got annoyed, overtook the bullock-cart, stopped the car, got down, pelted stones at the cart-man, pulled him down from the cart and assaulted him. In this connection an offence was registered at the Thana Taluka Police Station, being C.R. No. 58 of 1970 under sections 147, 337 and 426, I.P.C. Thereupon apprehending danger, on February 22, 1970 P.S.I., Kulkarni of Thana Taluka kept one sub-inspector and fifteen S.R.P. men at Mumbra and stationed himself at Kausa with a posse of fifteen S.R.P. men from 11 a.m. on February 22, 1970. At about 3 p.m., five trucks carrying Shiv Sainiks and flying Bhagwa flags, followed by a station wagon and three cars, came to Kausa *en route* to Mahad. While the last of these vehicles was passing out of Kausa, some stones were pelted at it. Thereupon all the vehicles stopped at a distance of one and a half furlongs from Kausa. About 350 Shiv Sainiks, who were being carried in these

vehicles, alighted. Some of them were armed with lathis, swords, knives, spears, axes and empty soda-water bottles. They started advancing towards Kausa, shouting. The villagers also started collecting; and by the time the Shiv Sainiks had come near Kausa and started pelting stones, about 400 villagers had collected. The villagers retaliated with stone-throwing. Fearing that there would be a hand-to-hand fight between the two crowds, the P.S.I. tried to disperse them by resorting to a cane-charge. The Shiv Sainiks, however, continued to advance, while the villagers started dispersing. By this time the Shiv Sainiks had begun setting fire to nearby houses and haystacks and had also attacked a petrol pump and damaged the storeroom-cum-office thereof. They also stoned a nearby hotel and a car and two trucks standing near the petrol pump. As the Shiv Sainiks continued to advance and seeing that the situation was taking a serious turn, P.S.I., Kulkarni, after giving warnings which went unheeded, took a 9 mm. pistol from an S.R.P. Sub-Inspector and fired seven rounds. This firing had the desired effect and the Shiv Sainiks retreated. When the fire was opened, some of the Shiv Sainiks attacked the mosque at Kausa. They pelted stones at it and broke all its glass fixtures. They also entered the mosque and stabbed a Muslim who was at that time the only person inside the said mosque. The Shiv Sainiks, who had entered the mosque, then joined their retreating associates. Some of the Shiv Sainiks were injured in the stone-throwing and in the cane-charge and one of them was injured in the police firing. They were, however, taken away in the trucks by the other Shiv Sainiks. The Shiv Sainiks, after lingering for a little while on the outskirts of Kausa, got into their vehicles and proceeded towards Mahad. P.S.I., Kulkarni and eight policemen and five villagers of Kausa were also injured in this incident. All of them except two Muslims, who were more seriously injured, were discharged after treatment.

87.71 The population of Kausa was at that time about 2,000 out of which about 800 were Muslims and the locality in which this incident took place was also a Muslim locality. The villagers, who were injured in the stone-throwing, as also those whose properties were set on fire by the Shiv Sainiks, were all Muslims. Two houses were completely gutted by arson and some temporary 'pandals' of wood and some haystacks were burnt down. The petrol pump and the hotel, namely, The National Hotel, which were attacked, also belonged to the Muslims. In this connection an offence was registered, being Thana Taluka C.R. No. 60 of 1970 under sections 353, 332, 337, 147, 148, 149, 324, 395, 435 and 436, I.P.C. The investigation was carried out by the Thana District Local Crime Branch and by the first week of March 1970, 4 Shiv Sainiks and a driver of one of the trucks in which the Shiv Sainiks were being carried, were arrested. Two other trucks bearing registration Nos. MRS 6015 and MRS 5911, in which the Shiv Sainiks were being carried, were attached, and notices under the Motor Vehicles Act, 1939, were issued against the owners of the five trucks which were carrying the Shiv Sainiks.

87.72 It will be convenient at this stage to set out the events which happened at Kausa and at nearby places later that night and subsequent to February 22, 1970. According to a complaint lodged by one Kannayya Kukulswami Naidu, a resident of Mumbra, his two sons were stabbed at Mumbra on February 22, 1970 at about 10-45 p.m. Though no motive was alleged in the said complaint, it was reported that his elder son was a member of the Shiv Sena.

87.73 A complaint was also lodged by one Ibrahim Ismail Kaji Sarang, the Shiv Sena Shakha Pramukh of Kausa, that he had been threatened by the Hindu and Muslim residents of Kausa that he would have to meet with dire consequences for what had happened at Kausa on February 22, 1970.

87.74 While returning from Mahad on February 23, 1970, some Shiv Sainiks helped themselves to eatables and fruits from hotels and fruit-shops situate at Wadkhal without paying any charges. The hotels and fruit-shops belonged to Hindus and the incidents, which took place in the early hours of the day, created some commotion in Wadkhal. In the meanwhile one of the Sub-Inspectors of the District Special Branch, who was following the Shiv Sainiks, reached Wadkhal and the Shiv Sainiks concerned made themselves scarce without indulging in any further mischief. Neither the proprietors of the hotels nor of the fruit-shops however, lodged any complaint.

87.75 The Shiv Sainiks then proceeded to Taloja and at about 6-30 a.m. entered the hotel of one Kaka Malluri and started eating whatever they could find. The hotel workers began remonstrating. Meanwhile, the Police intervened and prevented further mischief. The same morning at about 7-30 a.m. bus No. MRS 8653, which was carrying some Shiv Sainiks who were returning from Mahad to Bombay, was stoned at Mumbra by seven or eight persons. Two Shiv Sainiks received some injuries in this stone-throwing. At noon some ten to fifteen persons went to Dadi Colony in Mumbra to assault Dr. Purmundlekar, a Shiv Sena worker. On receiving information the Police rushed to the spot and arrested four Muslims and a Hindu. In the evening at about 6 p.m. Shamsunder Govind Jagushte and Waman Bala Patil, residents of Dadi Colony, Mumbra, had gone to the National Hotel at Kausa for taking tea. Suspecting them to be Shiv Sena workers, three or four Muslims assaulted them. In this connection two Muslims boys were arrested by the Police near the said hotel.

87.76 The incidents, which happened at Kausa and the nearby places, show the danger which lies when large contingents of the workers of a political party, many of them armed, go about in motorcades and processions. These workers, when they are in such large numbers, rouse themselves to a pitch of frenzy by shouting slogans and come to think of themselves as an invincible, conquering army on the march. They pose a grave threat to law and order and disrupt the ordinary and normal life of the people. If such motorcades and processions are to be allowed, they should only be allowed under

stringent restrictions. The Police are well aware in advance that such motorcades and processions are to take place. Every effort must be made, irrespective of any clamour that might subsequently be raised by the politicians, to see that none of the persons participating in such motorcades and processions is armed or is carrying any weapons. There should be no turning of a blind eye at political workers being carried unauthorisedly, without a permit, in goods trucks. The incident at Kausa also illustrates how prompt action by the Police, particularly prompt resorting to opening fire, can immediately bring a riot under control and prevent further loss of life and property.

The cartoon in the 'Marmik'

87.77 In the 1st March 1970 issue of the Shiv Sena Marathi weekly the 'Marmik' there appeared a cartoon on page 19 (Ex. BR 2). It showed a barefooted Shiv Sainik walking down the road to Kausa and a bearded two-toothed serpent, wearing a fez with a star and a crescent on it, trying to bite his right foot. The Shiv Sainik has an upraised cudgel in his right hand with which to strike the snake. There are two figures in the right-hand corner with the tag "opposition parties" on them, shouting, "See, see that cudgel". The comment on the left hand top corner is, "Cudgel is noticed but the tooth is not noticed". The caption below the cartoon stated:—

"Soda-water bottles and stones were thrown on the caravan of the Shiv Sainiks at Village Kausa. Those who have no regard for truth or falsehood and who entertain the utmost hatred against the Shiv Sena must now have gone wild with joy and they will, in the Legislative Assembly also, by slapping themselves on the upper arms, satisfy their itch for defaming the Shiv Sena."

87.78 The Commissioner of Police for Greater Bombay consulted the Chief Police Prosecutor whether this cartoon was actionable under section 153A and the Chief Police Prosecutor's opinion was that it was not. The Home Department pursued the matter with the Legal Department which confirmed this opinion (C.W. 1/62/51, 74/58, 95/66). In the witness-box I.G.P. Rajadhyaksha opined, "though the cartoon seen by itself without the caption below it is objectionable, but read along with the caption it may not be objectionable. The snake in the cartoon, in the context of what happened at Kausa, depicts the Muslims" (C.W. 2/58/106).

87.79 Apart from the question whether the cartoon was actionable or not under section 153A, I.P.C., it was a communal cartoon as it satisfies the test of a communal writing laid down in paragraph 6.7 of Chapter 6, for it depicted the Muslim community as a snake lying in wait to bite the unwary Hindu passers-by, thus exciting anti-Muslim feelings amongst the Hindus.

The hartal on February 22, 1970

87.80 The hartal called by the Shiv Sena in Mahad on February 22, 1970 to protest against the ban on its entry was a success and all

the shops remained closed in spite of the efforts of the local Congressmen to persuade the shopkeepers to keep their shops open (Ex. G 244). This was not the result only of pro-Shiv Sena feelings on the part of all. In the case of quite a few, it was the fear of consequences that would follow and the violence and loss of property that would ensue were their shops kept open. P.I., Salvi in his report dated February 23, 1970 (Ex. G 252) has mentioned the instance of a merchant, one Sheth, who kept his shop open for some time but was forced to close it down under threats. P.S.I., Haridas of S.S.B. (Kolaba) has stated in his report dated February 23, 1970 (Ex. G 251) that from morning "all normal routine in Mahad town was stopped."

Whether the Shiv Sainiks went to Mahad in trucks ?

87.81 There is no reference to the Shiv Sainiks coming in trucks to Mahad on February 22, 1970 in the affidavits of D.M., Savanur, S.P., Khan, C.P.I., Saluke or P.S.I., Vichare. The only affidavit on behalf of the Executive-Magistrates and the District Police Officers, in which a reference to this fact is made, is the affidavit of Taluka Magistrate Joshi who has stated [P.W. 102/1(13)/3359(6)]:

"About 15 hundred Shiv Sainiks from Bombay, Kalyan, Thana, Panvel, etc. had gathered at Mahad on 22nd February 1970 They came in *cars and trucks.*"

Savant had emphasized in his affidavit the fact that the Shiv Sainiks came to Mahad in trucks [C.W. 29/1(22)/3252(21-2)] This fact has also been referred to in their affidavits by Ebrahim Chichkar [C.W. 30/1(14)/3270(8)] and Shujauddin Kazi [C.W. 31/1(9)3276(6)]. In cross-examination Khan denied that any Shiv Sainiks had come to Mahad in trucks. He, however, stated that they might have come upto Mahad in trucks but did not enter Mahad in them (P.W. 97/45/3307-8). D.I.G. (B.R.), Gokhale supported Khan when he stated in cross-examination (G.W. 4/45/3373):

"After reaching Mahad on February 22, 1970 I moved about in the town. I did not see any trucks carrying Shiv Sainiks. One case of an accident to a truck carrying Shiv Sainiks was reported to me late at night."

P.S.I., Vichare was on bandobast duty at Kemburli Naka from about 10 a.m. on February 22, 1970 till about 12-30 a.m. on February 23, 1970. In cross-examination he at first stated that he did not see any truck carrying Shiv Sainiks going from Kemburli Naka towards Mahad, nor did any trucks carrying Shiv Sainiks go by the Highway past the place where he was, nor did he see any trucks carrying Shiv Sainiks going towards Bombay from Mahad either by Gandhari Naka or Kemburli Naka or by the Highway (P.W. 101/16/3349). His further cross-examination revealed a totally different picture.

87.82 It is a matter of regret that these officers should not have been candid with the Commission on this point. An overwhelming mass of documentary evidence was produced, due to the persistence of S. B. Savant, which clearly and without any doubt showed that the Shiv

Sainiks from Bombay and other places had come to Mahad in trucks on February 22, 1970. It must, however, be said in favour of S.P., Khan that at a subsequent stage he admitted his mistake and produced several documents relevant to this point. He sought to excuse his earlier answers on the ground that he was transferred from Kolaba District to Bombay in January 1971 and was, therefore, not in touch with matters relating to Kolaba District and a part of the record, particularly the part relating to the correspondence, reports, etc., about the Shiv Sainiks coming to Mahad in trucks, was not available to him until after he had completed the major part of his evidence before the Commission (P.W. 97/65/3430).

87.83 The evidence on record conclusively establishes that Savant is right.

87.84 The Shiv Sainiks had come to Mahad on January 17, 1970 in trucks. From this previous experience Khan had apprehended that on February 22, 1970 also the Shiv Sainiks would come to Mahad in trucks unauthorisedly and had accordingly sent a wireless message on February 19, 1970 (Ex. G 259) requesting the I.G.P. to instruct the State Traffic Sub-Inspectors to check the unauthorised carrying of Shiv Sainiks by trucks from Bombay to Mahad at Wadkhal and from Ratnagiri to Mahad at Poladpur till February 23, 1970, and in pursuance thereof the I.G.P. had, by his letter dated February 21, 1970, given instructions to the S.P., State Traffic Branch, Bombay, for checking such trucks (Ex. G 260).

87.85 Apart from the oral evidence in which the truth was ultimately extracted, there is documentary evidence on the record which leaves no doubt that the Shiv Sainiks came in trucks to Mahad on February 22, 1970. These documents are:—

- (i) the report dated February 23, 1970 from Sub-Inspector Haridas, Intelligence, S.S.B., Kolaba, to the D.I.G. (Int.) (Ex. G 251),
- (ii) the report dated February 23, 1970 from Inspector R. S. Salvi of the State Intelligence (P.W. 107) to the D.I.G. (Int.) (Ex. G 252),
- (iii) the report No. 15/Y & S/70-2467, dated February 23, 1970 from the D.I.G. (Int.) to the Home Secretary (Ex. G 238),
- (iv) the report No. 15/Y & S/1970-2468, dated February 23, 1970 from the D.I.G. (Int.) to the Home Secretary (Ex. G 239),
- (v) the report No. SS/201/1970, dated February 23, 1970 from G. S. Deshpande, P.S.I. (Int.), C.I.D., Thana, (P.W. 60) to the D.I.G. (Int.) (Ex. G 265),
- (vi) the report dated February 24, 1970 from S.P., Khan to the D.I.G. (Int.) (Ex. G 333),
- (vii) the entry No. 14 under date February 24, 1970 in the station diary of the Mahad Town Police Station (Ex. P 1163),
- (viii) the report dated February 27, 1970 from D.M., Savnur to the Home Secretary (Ex. P 1129),
- (ix) the letter dated March 11, 1970 from S.P., Khan to the P.S.I., Panvel (Ex. P 1185),

- (x) the note on incidents at Kausa, Mahad and Wadkhal annexed to the letter dated March 12, 1970 from S.P., V. K. Saraf to the Under Secretary, Home Department (Special) (Ex. G 247),
- (xi) the note on the prosecution of truck drivers and owners (Ex. P 1521) produced by Dy.S.P., M. K. Diwate, S.D.P.O., Bhiwandi (P.W. 60), and
- (xii) the 1st March 1970 issue of the Shiv Sena weekly the 'Marmik'.

87.86 P.S.I., Haridas in the report dated February 23, 1970 (Ex. G 251) has stated:

"From 11 a.m. onwards Shiv Sainiks started coming in S.T. buses, *trucks* and cars from places like Khed, Chiplun, Bombay, Thana, Kalyan, etc. "Their number was about 700".

87.87 P.I., Salvi of State Intelligence in his report dated February 23, 1970 (Ex. G 252) has stated:

"... *lorries*, private buses and cars containing Shiv Sena leaders excluding Shri Thackeray and Shiv Sainiks started arriving... I too came down into the town to see the situation there and find out what the *lorry-loads of people* were doing and where they were going."

In another part of his report while referring to the Shiv Sena meeting held at night on February 22, 1970, Salvi has stated:

"The meeting started at about quarter past nine and about 3,000 to 3,500 persons attended it. Of these, about 1,000 persons had come from Bombay side in 7 *trucks*, 2 private buses, 12 to 15 cars and by S.T. buses. The rest belonged to nearby villages and Mahad, many of them being boys."

87.88 In his report No. 15/Y & S/70-2467, dated February 23, 1970 (Ex. G 238) the D.I.G. (Int.) has stated:

"About 2,500 Shiv Sainiks from Bombay, Thana, Kolaba and Ratnagiri districts had come to Mahad in *trucks* for the meeting."

87.89 In his report No. 15/Y & S/1970-2468, dated February 23, 1970 (Ex. G 239) the D.I.G. (Int.) has stated:

"... on 22nd February 1970 in the afternoon a *convoy of trucks* and a bus carrying Shiv Sainiks, proceeding towards Mahad to attend the public meeting scheduled to be addressed by Shri Bal Thackeray, passed through Village Kausa (Thana)."

87.90 P.S.I., G. S. Deshpande (P.W. 60) in his report No. SS/201/1970, dated February 23, 1970 (Ex. G 265) has stated:

"At about 1500 hours 5 *trucks carrying Shiv Sena followers* and bearing a Bhagwa flag followed by 1 station wagon and 3 cars came to Kausa on their way to Mahad."

87.91 S.P., Khan (P.W. 97) in his report dated February 24, 1970 (Ex. G 333) has himself stated:

"By about 1-30 or 2 p.m. in the afternoon, motor vehicles (Private vehicles and *trucks*) of Shiv Sainiks started coming along Bombay-Goa Road also."

87.92 D.M., Savnur in his report dated February 27, 1970 (Ex P 1129) has stated:

“ About fifteen hundred Shiv Sainiks from Bombay, Thana, Kalyan, Panvel, Ratnagiri, etc., had gathered at Mahad on that day. *They had come in cars and trucks They entered Mahad by the approach road leading to the S.T. Bus Stand from the Bombay-Konkan-Goa State Highway obeying the modified order under section 144, Cr.P.C. The Shiv Sena Sainiks gathered in the town by wandering here and there in groups and also by sitting in the cars and trucks in the part of Mahad Town wherefrom the ban had been vacated.*”

87.93 Entry No. 14 in the station diary of the Mahad Town Police Station Diary of February 24, 1970 (Ex. P 1163), states as follows:—

“ On the date the 22nd February 1970, Shiv Sena men came from Bombay to Mahad at night in *trucks* and cars. It was learnt that *one out of those trucks met with an accident on the Bombay-Goa Road between Kemburli Naka and Mahad* and some persons sustained injuries, that local doctors gave first-aid to the injured persons and that thereafter the injured persons were taken to the hospital at Mangaon in the Shiv Sena vehicle. Therefore, Head Constable Salunkhe was sent there to make inquiries. No one is giving proper information in the town. In that behalf further steps will be taken after making inquiries.”

87.94 By his letter dated March 11, 1970 (Ex. P 1185) S.P., Khan intimated to P.S.I., Gadkar of the Panvel Town Police Station (P.W. 106) that the registration numbers of goods trucks carrying the Shiv Sainiks by road were taken down by P.C., A. R. Shinde (Buckle No. 1160) who was on traffic duty at that place and asked him for a detailed report on the action taken against the drivers of the said trucks and if no action was taken upto that date, to take the same immediately.

87.95 S. P., V. K. Saraf's note on the incidents at Kausa, Mahad and Wadkhal (Ex. G 247) states:

“ On 22nd February 1970, a public meeting under the auspices of the Shiv Sena was to be organized at Mahad. Shiv Sainiks from Bombay, Thana and its vicinity were, therefore, proceeding towards Mahad in the afternoon. They were going in a convoy consisting of about 5 *trucks*, 1 station wagon and 2 to 3 cars.”

The said note also mentions that a truck-driver had been arrested in respect of the offences committed in the Kausa incident and that two trucks bearing registration Nos. MRS 6015 and MRS 5911, which were carrying Shiv Sainiks at the time of the said incident, were attached and the R.T.O., Bombay, had been requested to suspend their road permits for a period of two years under section 60 of the Motor Vehicles Act, 1939, and that notices had been issued to the drivers of the said trucks to show cause why departmental inquiries should not be initiated against them. It is further mentioned in the said note that the Panvel Town Police had taken action against the owners of the five trucks which were unauthorizedly without permits transporting the Shiv Sainiks on February 22, 1970, without permits.

87.96 From the note on the prosecution of truck drivers and owners (Ex. P 1521) filed by Dy. S.P., M. K. Diwate (P.W. 66) it appears that the said truck No. MRS 6015 was carrying 50 Shiv Sainiks and that the R.T.O. had suspended the permit of the said truck, while the said truck No. MRS 5911 was also carrying 50 Shiv Sainiks and the driving-licence of the driver of the said truck and the permit of the said truck had been cancelled.

87.97 The 1st March 1970 issue of the Shiv Sena Marathi weekly the 'Marmik' carried on page 6 a photograph of S.R.P. men standing in the foreground with their backs towards the reader and in the background trucks, decorated with Shiv Sena flags, full of gesticulating persons waving Shiv Sena flags. The caption read, "Who are those on the march? These are the soldiers of Maharashtra — To implement their declaration that the Shiv Sena meeting must be held in defiance of section 144, all the Maharashtra-soldier Shiv Sainiks going by large trucks, flying sacron flags, proudly passing in front of S.R.P. wolves towards Mahad". Page 4 of the same issue carried a report on the accident to the said truck carrying the Shiv Sainiks. It was headed, "48 Shiv Sainiks going to Mahad meet with accident: Truck turns turtle". In the said report the truck is described as "the truck of the Kalyan Shiv Sena Branch" and the time and place of the accident are mentioned at about 6-30 p.m. at Natikhind.

87.98 These documents can leave no doubt that on February 22, 1970, a large number of Shiv Sainiks came to Mahad in trucks, that one of those trucks met with an accident at Natikhind within the limits of the jurisdiction of the Mahad Town Police Station, that the Shiv Sainiks moved about in Mahad Town in trucks and that they returned from Mahad also in trucks. It is also clear from the said reports that in spite of express instructions issued by the I.G.P. by his letter dated February 21, 1970 to the S.P., State Traffic Branch, Bombay, (Ex. G 260), not a single one of such trucks was stopped on the way, but instead the Shiv Sainiks were allowed to proceed on their way without any let or hindrance. It is regrettable that in spite of the said reports and the express and unequivocal statements made by them in their own reports, senior officers should have omitted to mention in their affidavits that the Shiv Sainiks had come to Mahad in trucks on February 22, 1970 and in their evidence should have at first denied this fact. But for the persistence of S. B. Savant and the fact that it appeared to Counsel for the Government and for the Executive Magistrates and the District Police Officers and to the officers who were present at the hearings before the Commission in respect of the Mahad disturbances that the Commission was inclined to believe Savant on this point, these reports would not have seen the light of day so far as this Inquiry is concerned.

87.100 In view of this overwhelming contemporaneous documentary evidence, it is hardly necessary to refer to the oral evidence, except in so far as it shows how truth had to be extracted from the witnesses in cross-examination step by step. We have already seen how S.P.,

Khan finally admitted that he had not given to the Commission correct information and complete details with respect to the Shiv Sainiks coming to Mahad in trucks. P.S.I., Vichare's evidence on this point is worth reproducing and it will show how he has prevaricated on each point and how step by step he was forced in cross-examination by Savant to state the truth. The relevant passage from his evidence is (P.W. 101/16/3349-3353):

“I was on bandobast duty at Kemburli Naka from about 10 a.m. on February 22, 1970 till about 12-30 a.m. on February 23, 1970. I did not see any truck carrying Shiv Sainiks go from Kemburli Naka towards Mahad. No trucks carrying Shiv Sainiks went by the Highway past the place where I was. I also did not see any trucks carrying Shiv Sainiks going towards Bombay from Mahad either via Gandhari Naka and Kemburli Naka or by the Highway. That night when I returned to the police station I learnt that a truck carrying Shiv Sainiks had met with an accident on the Raigad Road. This information was given to me by someone from the Police. I did not ask to see the Station Diary. The entry relating to this accident is made by me in the Station Diary on February 24, 1970 at 8145 a.m. The entry in the Station Diary shows that the accident took place on the road between Kemburli Naka and Mahad. Though the accident happened between Kemburli Naka and Mahad, I stated in evidence that it happened on Raigad Road because the road also leads to Raigad. It is true that the entry in the Station Diary does not mention that the accident happened on the Highway. I now say that at about 1 p.m. Arun Mehta with some Shiv Sainiks came to Kemburli Naka from Bombay. He stopped the car and informed me that some trucks full of Shiv Sainiks were following. I said that if trucks came with passengers I would prosecute them. Two trucks carrying Shiv Sainiks thereupon halted at Kemburli Village and the Shiv Sainiks got down from the trucks and went towards Mahad shouting slogans. The truck to which the accident happened was one of the two trucks from which these Shiv Sainiks had got down and which proceeded further towards the Highway. It is true that the accident did not happen to the truck when it was empty. The road from Kemburli Naka to Gandhari Naka was closed because of the ban prohibiting entry into the disputed place and I therefore did not allow the Shiv Sainiks who had got down from the truck to proceed towards Gandhari Naka. They waited there till about 5 p.m., when Arun Mehta and Pramod Navalkar came there. Thereafter they went a couple of furlongs on foot along the Highway and the empty truck followed them. The truck followed them for these persons to get into the truck. It is a straight Highway and one can see for a considerable distance. I saw them get inside the truck. I now admit that there were three or four such trucks but only one of them was actually carrying passengers when passing Kemburli Naka. These passengers were all Shiv Sainiks. Each of these trucks was decorated with Shiv Sena flags. I did not take down

the number of any of these trucks. There were ten constables with me. I did not send any of these constables to Kemburli Village to take down the numbers of the two trucks which were parked there. It was not possible for me to send a constable for this purpose even though the two trucks were parked in Kemburli Village for about four hours because about 100 to 150 Shiv Sainiks had formed a crowd and were wanting to proceed towards Gandhari Naka.

To Commission :

I have not made a report about what transpired at Kemburli Naka on February 22, 1970. I did not make a report because the Collector, the S.P. and the other officers were all standing at Gandhari Naka. I do not know whether they witnessed or could see what had happened. I did not orally inform them about what had happened. There were 40 or 50 constables with the D.M. and the S.P. None of the persons in the crowd of about 100 to 150 Shiv Sainiks who had gathered at Kemburli Naka attempted to proceed further by force. They were merely shouting slogans and shouting loudly that they would enter Mahad by this road only without caring for the prohibitory order. The situation was not such as required me to send for reinforcements from the S.P. It was possible for me to send a constable at Kemburli Village to take down the numbers of the two trucks which were parked there but it did not occur to me to do so.

To Mr. Savant :

These trucks carrying Shiv Sainiks went past Kemburli Naka towards Bombay after 12-30 a.m. on February 23, 1970. I myself did not see them because I had gone to the S.T. Stand and was informed the trucks carrying Shiv Sainiks were parked at the S.T. stand after entering Mahad and had just left the stand on their return journey. There was proper police bandobast kept at the S.T. stand on February 22, 1970. None of the constables took down the numbers of any of these trucks. I did not inform either the S.D.P.O. or the S.P. about what had happened at Kemburli Naka or about the trucks carrying Shiv Sainiks which were parked at S.T. stand or that no policemen had taken down the numbers of these trucks. I did not make any inquiry why none of the constables who were posted at the S.T. stand had failed to take down the numbers of these trucks. The trucks passed Kemburli Naka to go towards Mahad at about 5 or 5-30 p.m. The accident to the truck happened within the municipal limits of the Mahad Municipal Council and within the limits of the jurisdiction of the Mahad Town Police Station. No information of the accident was given at the Mahad Town Police Station as required by section 89 of the Motor Vehicles Act, 1939. On learning about this accident I ordered a head constable to make inquiry. The number of the truck which was involved in the accident was MHT 1892. This is the registration number of Maharashtra State. The driver of the truck was prosecuted for carrying passengers in the truck without a permit and for not securing medical attention for the injured and not reporting the

accident to the Police and was charged under sections 42(I) and 89 of the Motor Vehicles Act. The driver was the only person to be prosecuted. The owner of the truck was not prosecuted. No inquiry was made to find out who the owner of the truck was. On June 29, 1970 the driver was convicted and sentenced to pay a fine of Rs. 60 and in default of payment of fine, to suffer imprisonment for 12 days. My investigation revealed that about 30 to 40 Shiv Sainiks were travelling in the truck... The owner of a truck is liable equally with the driver for persons being carried in the truck without the necessary permit."

87.101 While referring to the incident which took place outside Savant's house later that evening Taluka Executive Magistrate Joshi has deposed that he noticed a truck passing by Mahatma Gandhi Road carrying about fifty Shiv Sainiks (P.W. 102/9/3366).

87.102 The conduct of P.S.I., Vichare and the other police officers and policemen at Kemburli Naka in not taking down the registration numbers of the trucks in which the Shiv Sainiks were travelling and in allowing these trucks to proceed and enter Mahad and the conduct of the police officers and policemen in not taking down the registration numbers of the trucks which were driving up and down the town carrying Shiv Sainiks is indefensible and can only be attributed to an intention not to provoke the Shiv Sainiks or to invite a confrontation with them. Such an attitude tends to bring the authority of law and order into contempt and to create an impression that a group of people, if properly organized, and with a reputation for indulging in violence, can, with impunity, defy the law, while the Police will remain merely passive spectators thereof.

87.103 Dy. S.P., Patankar has deposed about the prosecution of some of these truck drivers and owners (G.W. 11/29/3411). On February 22, 1970 the police constable on traffic duty at Panvel noticed four trucks, which were public carriers, carrying a number of Shiv Sainiks, proceeding towards Mahad. In order to check whether these trucks had permits authorizing them to carry persons in excess of the number allowed for a goods truck, the police constable blew his whistle to stop the trucks. The trucks, however, did not care to stop. The constable took down the numbers of the said four trucks. These numbers were MRS 5911, MRT 7153, MRS 6015 and BMQ 4288. The trucks Nos. MRS 5911 and MRS 6015 were also noticed at Kausa, carrying Shiv Sainiks unauthorizably. On inquiries made from the Regional Transport Officer, Thana, the owners of the trucks Nos. MRS 5911 and MRS 6015 were traced, while the owners of the other two trucks could not be traced. The road permits of the said two trucks bearing registration Nos. MRS 5911 and MRS 6015 were cancelled and the owners of these trucks were prosecuted before the Judicial Magistrate, First Class, Panvel, but were discharged.

The Shiv Sainiks at Kemburli Naka

87.104 We have already seen in Vichare's evidence what transpired at Kemburli Naka. From the report dated February 24, 1970

made by S.P., Khan to D.I.G. (Int.) (Ex. G 333), it appears that the Shiv Sainiks who were collected there, were shouting slogans including, "Why so many policemen? — For Savant's funeral" and "Why so many policemen? — for the funeral of the Congress". Dr. Baburao Mehta was at the Kemburli Naka along with the D.M. and the S.P. from 4 p.m. to 6 p.m. requesting the Shiv Sainiks to go to Mahad by the S.T. Stand Road and not via Bunder Naka (C.W. 46/9/3959). When the Shiv Sainiks learnt about the modification of the said prohibitory order (Ex. P 1082) there was great jubilation amongst them and they raised slogans of "Shiv Sena Ki Jai", "Shiv Sena Zindabad", "Bal Thackeray Ki Jai" and "Bal Thackeray Zindabad" (P.W. 102/13/3369 ; C.W. 46/9/3959). Ultimately the Shiv Sainiks entered Mahad by the S.T. Stand Road.

The incident at Savant's house

87.105 By the evening of February 22, 1970 rumours of the Kausa incident started trickling into Mahad. These were vague rumours to the effect that some things were burnt, some persons injured and some other persons killed in police firing (P.W. 97/47/3309-10).

87.106 That evening the Shiv Sena leaders had tea at about 6 p.m. at Dr. Baburao Mehta's place (C.W. 46/9/3959). At that time a number of Shiv Sainiks had gathered outside the house of S. B. Savant which is situate in a lane off the main road, about 50 paces from Dr. Baburao Mehta's house, and started shouting slogans against Savant. Savant telephoned to the Mahad Town Police Station for protection. S.P., Khan had initially posted a platoon of S.R.P. men and 5 Sub-Inspectors just opposite Savant's house. Later he sent another platoon of S.R.P. men, one Dy. S.P. and two more Sub-Inspectors to his house. A platoon consists of about 30 men. While he was standing at Kemburli Naka and later near the disputed property, Khan kept on receiving messages from Savant. After Khan had returned to the police station, Savant also spoke to him on the phone. He told him that the situation had taken a menacing turn and Khan should come to him immediately. Khan, however, did not go there because, as he deposed, "I refused to leave the area where I expected trouble and go and look after the personal security of Savant". Khan was at the police station for about an hour or so (P.W. 97/46/3309).

87.107 In the evening of February 22, 1970 Inspector Salvi of the State Intelligence was at Kemburli Naka. According to his said report dated February 23, 1970 (Ex. G 252), at about 6-30 p.m. Khan received a message from the Mahad Town Police Station to the effect that some Shiv Sainiks were creating trouble near Savant's residence and were likely to cause a disturbance and a breach of the peace and that tension was mounting and the S.P. should come there to watch the situation. At that time some lorries, private buses and cars carrying Shiv Sainiks began arriving there. The S.P., therefore, sent word that he could not come and despatched the S.D.P.O., Mahad, and the Mamlatdar to deal with the situation. These officers proceeded

to Savant's house and Salvi too went into the town to see what was happening. He called on Savant to inquire what was the matter. Savant told him that a number of Shiv Sainiks had gathered outside his door and were giving abuses and shouting slogans such as "Congress Murdabad" and "Savant Pleader Murdabad", that though he had tried to reason with them, they would not stop, and that thereupon Congress workers had rushed to the place and he was restraining them, but they too were indulging in shouting counter-slogans. Savant complained to Salvi that he had several times rung up the police station and that the policemen posted in the square near his residence and near the post office were standing there as mere spectators and the police officers did not even tell the Shiv Sainiks not to crowd there or not to give personal abuses. In the presence of Salvi, he again telephoned the police station, Finding that the S.P. was there, he started narrating the whole story to him. It appears that what the S.P. told him did not please Savant, Salvi and the other officers persuaded Savant to remain calm and to see that his men did not create any trouble and left for the Azad Maidan to attend the meeting.

87.108 Taluka Executive Magistrate Joshi was in his office till about 2 p.m. on that day. He then went to the Inspection Bungalow. Thereafter he took a round in the town and returned to his office at about 5 p.m. At 6 p.m. he went to Pimpalpar Naka and waited there for some time and then proceeded to Salvad Naka and from there went back to his office at about 7 p.m. He learnt there that Savant had telephoned to him. He, therefore, went to Savant's house and found a mob gathered on the road outside the house. The persons in the mob were shouting anti-Congress slogans such as, "Congress Murdabad" and "Savant Murdabad". He went inside Savant's house and met him and then returned to his office, on the way informing the police station about the situation. After some time he went back to Savant's house. He then found two mobs — one shouting anti-Congress slogans and the other shouting anti-Shiv Sena slogans. The S.D.P.O., Mahad, two Sub-Inspectors and about 20 policemen were standing there. Joshi stood between the two mobs and pacified the mobs. Slowly the mobs dispersed and went towards the Azad Maidan. Meanwhile a truck carrying Shiv Sainiks passed by on the Mahatma Gandhi Road (P.W. 102/9/3366).

87.109 Turning now to Savant's version, Savant has stated in his affidavit [C.W. 29/1(21)/3252(20-1)]:

"A good many Muhammadans left Mahad with their families on 21st February 1970. Such was the general panic! When the tension was thus at its highest the local authorities, under orders from above, lifted the ban at 10 a.m. on 22nd February 1970. Boundless was the jubilation of the Shiv-Sena, the P.S.P., the Jan Sangh and the Syndicate Congress! The shouts of "Bal Thackeray Ki Jai" rent the air. The prestige of the Shiv Sena went sky-rocketing in Mahad! It was openly said that before the onslaught of Thackeray the Government had surrendered and the Congress had melted. The

Shiv Sainiks who entered the town from Bombay, Kalyan, Panvel, Khed etc., that day virtually staged a devils' dance in the streets of Mahad. My house was specially chosen for showering insults and indignities. The Police simply stood by watching without remonstrating with the demonstrators. Even the D.S.P. refused to come to my help. When the Congress workers got scent of this devils' dance in front of my house they hastily gathered and thereafter the Shiv Sainiks began to melt away. A war of slogans was then started between the Congress workers and the Shiv Sainiks. Further unseemly developments were, however, prevented by the timely arrival of a strong squad of the S.R.P."

87.110 It is not necessary for the purpose of this Inquiry to go into this incident in great detail nor into the allegations and counter-allegations with respect thereto nor is it necessary to point out or discuss the discrepancies and contradictions between the versions of different witnesses, Savant was greatly peeved that the S.P. personally did not come to his house to supervise the bandobast. His *amour propre* appears to have been hurt. Khan, on the other hand, seems to have felt that Savant was throwing his weight about too much and was behaving as if all officials were at his beck and call and he was their superior and could order them about as he liked. It is true that no trouble had erupted that evening or that day at any place in the town except near Savant's house and, as Joshi has testified, because of the incident between Congressmen and the Shiv Sainiks, "the atmosphere in the town was surcharged with tension" (P.W. 102/9/3367). From their behaviour at Kemburli Naka and in the town, it is clear that the Shiv Sainiks, who because of Savant's efforts had been deprived of the "Mahikawati" issue with which to excite and whip up the communal feelings of the people, had turned their anger on Savant. Further, they believed that it was Savant who was responsible for the ban on their entry into Mahad as is borne out by the speeches made at the public meeting held that night (Ex. P 1084). They would naturally want to crow at what they considered their victory over Savant by reason of the modification of the ban. In his report dated February 21, 1970 (Ex. G 235) made to the Home Secretary, the D.I.G. (Int.), had referred to Savant's criticism of Bal Thackeray at the said public meeting held on January 28, 1970 in which Savant had said that he would smash the Shiv Sena so far as Mahad was concerned [or as the D.I.G. (Int.) had put it in his said report "would reduce the Shiv Sena to pieces at Mahad"], and had pointed out, "if Shri Thackeray criticises Shri Savant in the public meeting on February 22, 1970, there is likelihood of some disturbances at Mahad on the day". Apart from Kemburli Naka, the disputed property and the Muslim locality, all of them potential danger spots, another place at which disturbances were to be expected on February 22, 1970 was, therefore, Savant's house. It was for the said reason that S.P., Khan had kept a strong police guard at the disputed property and in the Muslim locality and had initially posted a platoon of S.R.P. men and

5 Sub-Inspectors just opposite Savant's house and when trouble actually took place there, had sent further reinforcements consisting of one Dy. S.P., 2 Sub-Inspectors and another platoon of S.R.P. men.

87.111 In my opinion, adequate police protection was afforded to Savant and it was not necessary for the S.P. either to go there personally or to remain there all the while, as Savant desired.

The trouble at the canteen

87.112 On February 22, 1970 in view of the 'hartal' called by the Shiv Sena, all the shops and hotels in Mahad were closed and only a canteen at the S.T. Stand was open. A large number of customers had therefore collected there. Some Shiv Sainiks ordered out food from the canteen but did not pay for it. Thereupon a commotion took place. Fearing further loss the owner closed the canteen (Ex. G 251).

The public meeting at the Azad Maidan

87.113 On February 22, 1970 at about 9-15 p.m. a public meeting was held at the Azad Maidan, at which the speakers were Arun Mehta, Wamanrao Mahadik, Manohar Joshi, Datta Salvi and Dr. Hemchandra Gupte. About 3,000 to 3,500 persons are estimated to have attended the said meeting out of which about 1,000 persons had come from Bombay and places near Bombay and the rest were from Mahad and the nearby villages, most of them being youths (Ex. G 252). A translation of the police shorthand reporter's report of the said meeting is (Exhibit P 1084).

87.114 The speakers glorified the Shiv Sena, ran down the Government and the Congress, congratulated the Muslims for surrendering the disputed property to the Government, and attacked Savant. Arun Mehta in the course of his speech referred to the hoisting of the flag on the disputed structure by Bal Thackeray, the removal of the said flag thereafter and the hoisting of another flag by Anna Pawar and how when Anna Pawar had come to Bombay, Bal Thackeray had embraced and patted him for his brave act. He congratulated and thanked the Muslims for handing over the disputed property to the Government. He further said:

" Shiv Sainiks are like honey-bees. You should not disturb them otherwise they will sting you. On 15th February 1970 the Police behaved arrogantly with Balasaheb Thackeray. Balasaheb Thackeray never wanted to organize a meeting at Mahad but the Police behaved as if this town is in the hands of Savant. Balasaheb did not at all desire to come here for any purpose but he wanted to pay respects to the citizens of Mahad, but he was prohibited from entering Mahad. The Police behaved as if this town is in the hands of Savant. We came here to defy the Section 144, Cr.P.C. order but we are permitted to enter the town to organize the meeting, hence defiance of 144, Cr.P.C. does not arise. The Government has withdrawn 144, Cr.P.C. orders. We have come here not to disturb the peace. No doubt there are provocations but we should remain peaceful. We have assembled here to hear the lectures of the Shiv

Sena leaders. Some of the Congress workers may not like this but we will not care for it.”

Continuing he said:

“Shri Savant is responsible for this tense atmosphere in Mahad. He published an article in the ‘Navshakti’ and that started the present tension. The Shiv Sena is not in any way responsible for this tension.... The Shiv Sena is fighting for the people of Mahad and against injustice. Shri Sawant M.L.A. is fully responsible for this Mahikawati dispute.”

He then proceeded to give a warning to Savant and said that it was not easy for him to cut Thackeray into pieces and that if any harm was done to Bal Thackeray or to any Shiv Sainik, then Savant would not be allowed to enter Bombay.

87.115 The next speaker was Wamanrao Mahadik. He referred to the accident which had happened to the truck. This accident took place at Natekhind on the Highway after passing Kemburli Naka within the limits of the jurisdiction of the Mahad Town Police Station. In the course of his speech he said:—

“Congressmen always are taking the side of Muslims. The Government is not in a position to solve the simple problem of Mahikawati. On 15th February 1970 Shiv Sena had no programme at Mahad. When Balasaheb Thackeray hoisted the flag at Mahikawati we thought the Muslims might kill us with swords. But the Muslims did not dare to assault us. Balasaheb came here only to tell that the Mahikawati temple belongs to the Hindus only, but the Congress is creating Hindu-Muslim frictions over the issue for their selfish political game. They want to hold the Shiv Sena responsible for this.”

He concluded by expressing a hope that the Shiv Sena would win the 1972 elections.

87.116 Manohar Joshi began his speech by attacking Savant. He asked Savant to come on the platform and have a discussion with them and said that if he was not ready to come, then they would not call him a real Hindu. He said that Savant was responsible for creating tension between the Hindus and the Muslims and that he had encouraged the Muslims and asked them to claim the disputed property as their own. He challenged Savant to contest the election on this issue in any ward in Mahad and said that he was sure that if Savant dared so to contest, Savant would not be elected. He then referred to the ban under section 144, Cr. P.C. and how they had come prepared to defy the ban and how the Government had withdrawn the ban and allowed them to enter Mahad. He also referred to the hartal observed in Mahad that day and the accident to the truck. He declared that the Shiv Sena was also going to contest the 1972 general elections from Konkan.

87.117 The next speaker Datta Salvi also referred to their determination to defy the ban and the lifting of it. Continuing, he declared that the disputed property belonged to the Hindus, but nobody had come forward to claim it until Bal Thackeray did so. He also said

that they had decided that if the said prohibitory order had not been withdrawn, they would offer 'satyagraha' and hold the meeting under any circumstances. He said that Savant had become old and should spend the rest of his life in devotion to God, because the people were not willing to tolerate his attitude any more. He further said that the Government had issued the said prohibitory order on a false report made by Savant and that there was no necessity for issuing the said order and that when the Government had come to learn about it, the Government has withdrawn it. He also referred to the accident to the said truck and declared that the Shiv Sena was going to contest the 1972 general elections.

87.118 After the said meeting was over, the Police noticed eight persons with lathis and one person with an axe near the S.T. Stand, that being the route by which the Shiv Sena contingent was to return to Bombay. These persons were disarmed and an offence under section 143, I.P.C., was registered against them at the Mahad Town Police Station under C.R. No. 22 of 1970. On that day orders under section 37 of the Bombay Police Act were not operative in the locality in which these persons were found. The investigation revealed that these nine persons were returning from the Shiv Sena meeting. As no criminal intension was revealed, an 'A' Summary was filed, classifying the case as being "True but undetected", which was granted by the Judicial Magistrate. First Class, Mahad. These nine persons were Congressmen and supporters of Savant [Exs. P 1129 & G 333, P.W. 97/1(12)/3212(7), P.W. 105/17/3427].

Savant's letter to the Chief Minister

87.119 On February 23, 1970 Savant wrote a letter (Ex. No. 83) to the Chief Minister complaining about what had happened on February 22, 1973. In the said letter he, *inter alia*, stated:

"It is rumoured that while in Chiplun he contacted either you or the I.G.P. on 16th February 1970 and he was assured that the order would be modified to allow him to make a triumphant entry in Mahad and take a public meeting.

"When I met you in Bombay on 19th February 1970 along with Shri A. R. Antulay I explained you that the prohibitory order under section 144, Cr.P. Code was not needed on 15th February 1970 but to modify it now just because he is fulminating against it in all the public meetings in Khed, Chiplun, Ratnagiri, etc., would mean Government's surrender to the illegal threats of an unscrupulous dictator. Thereby the Government will lose face. You admitted that you never knew that the order was for ten days and that you would look into the matter....

"I have now to request you to enlighten me on the following points:—

- (i) Is there any truth in the very wide-spread rumour that there is some secret understanding between the Government and the Shiv-Sena ?

- (ii) Were you consulted before the order under section 144, was modified on 22nd February 1970 ?
- (iii) How far is it true that our I.G.P. is a close personal friend of Bal Thackeray and is always willing to oblige him to bolster up his prestige ?
- (iv) What were the reasons for modifying an order after Shri Thackeray had publicly declared that he would defy it ?
- (v) Is it not the duty of the Police to stop provocative actions by a hostile mob in order to maintain law and order or do the Police expect the aggrieved parties to be impotent and motionless under provocative conditions ?
- (vi) How is it that Bal Thackeray knew of the intended modifications of the order days before it is actually modified ?
- (vii) It is learnt that the trucks that carried Shiv-Sainiks had not obtained the necessary permission from the R.T.O. How is it that the Police always connive at such illegalities ?

He ended the said letter by requesting the Chief Minister to attend the public meeting called by him on February 27, 1970. Paragraphwise comments on the said letter were submitted by S.P., Khan to D.I.G. (Int.) by his letter dated April 2, 1970 (Ex. P 1190). In the said letter Khan admitted that on and prior to February 22, 1970 there were rumours in Mahad that the Shiv Sainiks were to be permitted to enter Mahad.

The Congress meetings and the torchlight procession

87.120 To counteract the prestige acquired by the Shiv Sena by reason of the modification of the said prohibitory order banning entry into Mahad and to meet the propaganda carried on by it against the Congress and himself, Savant called a public meeting on February 27, 1970. He also held a private meeting of about twenty-five Congress workers at the Congress House, Mahad, on February 23, 1970. The details of what transpired at the said private meeting are to be found in the evidence of Dy. S.P., Patankar [G.W. 11/1(28)/3398(12)] and the report dated March 6, 1970 from the D.I.G. (Int.) to the Home Secretary (Ex. G 246). At the said private meeting Savant stated that the Shiv Sena was trying to weaken the Congress and appealed for unity in the Congress and exhorted the persons present to bring the maximum number of persons to attend the public meeting called by him on February 27, 1970. After the said private meeting a torchlight procession of about 150 persons was taken out at night by the Yuvak Congress. The procession passed through the Muslim locality and the areas of the Shah Bahiri Dargah and the disputed property, shouting slogans such as "Congress Zindabad", "Savant, M.L.A., Zindabad", "Dr. Baburao Mehta Murdabad" and "Syndicate Murdabad". The procession terminated near the disputed property and Savant delivered a short speech saying that the procession was unscheduled and spontaneous and exhorted the people not to observe the "Mahad Bandh" on March 2, 1970 called by the Shiv Sena.

87.121 The public meeting called by Savant was held at Raigad Chowk in Mahad on February 27, 1970 at about 9.45 p.m. and was presided over by M. R. Kamlakar, the President of the Mahad Taluka Congress Committee. The said meeting was attended by about 900 persons. Savant was the main speaker. In his speech he charged Dr. Baburao Mehta with writing a letter to Bal Thackeray and giving him information about the disputed property after Bal Thackeray's visit to the Durgadi Fort. In the course of his speech he also charged Dr. Baburao Mehta's son Arun Mehta with changing parties, saying that he was formerly working with the Indian National Trade Union Congress, but had joined the Shiv Sena when he had found that he was not successful there. He referred to the incident outside his house on February 22, 1970. He also charged the Police with informing the Shiv Sena leaders in advance that they were going to modify the ban under section 144, Cr. P.C. He criticized the modification of the said ban. In the course of his speech he criticized the Shiv Sena and its policies and exhorted the people not to support the "Mahad Bandh" on March 2, 1970.

87.122 A report on this meeting was sent by D.I.G. (Int.) to the Home Secretary by his letter dated March 6, 1970 (Ex. G 246). P.S.I., Vichare has also made a report on this meeting (Ex. P 1086). Savant has challenged the correctness of Vichare's report and has filed a note (Ex. No. 82) pointing out the inaccuracies in it. It is not necessary for the purposes of this Inquiry to deal in detail with this point. Not much reliance can be placed upon P.S.I., Vichare's ability to take down or to reproduce accurately the long speeches made at the said meeting and wherever his report differs from Savant's note, I accept Mr. Savant's version. In Savant's own words [C.W. 29/1(23)/3252(22)]:

"In order to dispel fear of the general public I addressed a largely attended public meeting in Mahad on 27th February 1970 and accepted all the challenges so copiously hurled at me by leaders of Shiv Sena in that public meeting held in Mahad on 22nd February 1970."

The "Mahad Bandh"

87.123 In view of the 'Mahad Bandh' call given by the Shiv Sena for March 2, 1970, orders under section 37 of the Bombay Police Act, 1951, were issued to be operative on that day.

87.124 In order to prevent the Shiv Sena call for "Mahad Bandh" on March 2, 1970 from being a success, on the night of March 1, 1970 Savant led a procession through the town with a loud speaker installed on a truck. The processionists shouted anti-Shiv Sena and anti-Bal Thackeray slogans. On March 2, 1970 Savant moved about in the town urging the shop-keepers to keep their shops open. However, the shops and schools remained closed, though the S.T. bus service continued to operate. As mentioned in connection with the hartal on February 22, 1970, the shops and schools remained closed not because everyone sympathized with the call for "Mahad Bandh", but because

the shop-keepers were afraid of the consequences if they kept their shops open. This is also shown by the fact that stones were pelted at a chemist's shop which was kept open. There was also an incident of assault by three persons, alleged to be Congress workers, and a counter-complaint of assault was lodged by one of them against some students and one other person.

The anonymous letter of threat to Savant

87.125 An anonymous letter dated February 24, 1970, purporting to be from a Shiv Sena worker of Bombay, was received by Savant threatening him in abusive language. The purport of the said letter was that if Savant continued to indulge in anti-Shiv Sena activities, he would be taught a lesson. The S.D.P.O., Mahad, was thereupon directed by the S.P. to register an offence under section 507, I.P.C. and to investigate it, but, as usually happens with anonymous letters, even though inquiries were made, the writer could not be traced [Ex. G 248, G.W. 11/1(29)/3398(13)].

The Assembly debates

87.126 Savant followed up his said letter of February 23, 1970 to the Chief Minister and the said public meeting held by him on February 27, 1970 by taking up the matter on the floor of the Maharashtra Legislative Assembly. He tabled a motion in the Assembly in respect of the Shiv Sena riots at Kausa, Mahad and Wadkhali at the time of the Shiv Sena visit to Mahad on February 22, 1970. A debate took place in the Assembly on the said motion on March 26, 1970, in which Savant took part (Ex. No. 84). In view of the said motion tabled by Savant, information was asked for by the Government for a reply and in pursuance thereof, a detailed note was prepared by S.P., V. K. Saraf of the State Intelligence (Ex. G 247) which has already been referred to. On April 16, 1970, Savant put certain short-notice questions about the surrender of the disputed property by the Muslims to the Government. These questions were replied to by Mr. D. S. Desai, the then Minister for Revenue, on April 16, 1970 (Ex. No. 85). Such of the questions put by Savant and the replies given by the Minister as are relevant to this Inquiry have already been referred to earlier in this chapter.

The attack on Savant in the "Marmik"

87.127 The 22nd March 1970 issue of the Shiv Sena Marathi weekly the *Marmik* (Ex. G 270), edited by Bal Thackeray, contained at several places a personal attack against Savant. Under the heading "Holi Honours List and Awards" it was *inter alia* stated:

"Several names were in view for the special award for Undiluted Opportunism. However, as the Mahad Congress M.L.A., S. B. Savant, had excelled all others in this respect, it has been decided to give that award to him. It was also decided to send him abroad for higher studies in Opportunism."

87.128 In the column headed "M.L.As. — Their duties, etc. etc.", under the sub-heading 'Shamba Savant of Mahad' an attack was made on Savant for asking questions in the Legislative Assembly and a request was made to him that "instead of seeking cheap popularity by writing articles about the Konkan or playing politics over the Mahikawati issue" he should carry the day in the Legislative Assembly by ventilating the grievances of the Mahad constituency. A reference was also made in the said column to the release of the nine supporters of Savant who had been found carrying lathis and an axe after the said Shiv Sena meeting held on February 22, 1970. In the said column these nine persons were described as "nine stooges of the Congress M.L.A., Savant, who had threatened civil war with the Shiv Sena in Mahad" and it was alleged that when they were arrested by the Police, they were carrying poniards and an axe, but as a result of the special influence brought to bear upon them, the Police had decided not to take further action.

87.129 At another place in the same issue in the feature column headed "The world of Berad" by "The Berad of Bori Bunder", under the heading "Uncle Mahad, Uncle Mahad, are you tired?", Savant was mocked at for his threats to the Shiv Sena. The said article *inter alia* stated:

"Balasaheb, who is this S.'B. Savant? I had not heard his name. He has, however, become the General Secretary of Holi in the Legislative Assembly this year. Must examine him completely once. I do not know if his lobes are pierced but he takes the side of the Muslims too much. Where is the necessity for this?

"This Savant is unnecessarily meddling. He has vowed that if Manohar Joshi lifts his hand to pull out his tongue, he would chop off the hand, Balasaheb, ever since he heard this threat by uncle Mahad Savant, Berad has been laughing incessantly. This uncle Mahad appears to be a huge joke. In the first instance, is it possible that anybody would touch his debauched tongue polluted by abusing the Shiv Sena? Again, Joshi happens to be a Brahmin. Oh uncle Mahad! Please first show that you can uproot a small mango sapling and thereafter brag about chopping off the hands of Shiv Sainiks. Do not invite avoidable trouble. Why should you make all this fuss if your constituency is in danger in 1972. All this is going to happen. Tomorrow perhaps these young boys from Mahad might chase you out and at that time Dr. Mehta himself would try to reason with them. However boys will be boys. Will they ever listen? They will go on saying—

Uncle Mahad, Uncle Mahad are you tired?

Why are you hiding in Doctor's dispensary?"

The above couplet was an adaptation of a couplet from a well-known Marathi nursery rhyme.

The removal of the Shiv Sena flag

87.130 Shiv Sena flags made of paper and cloth were hoisted or fixed by the Shiv Sainiks at different places in the town for Bal Thacke-

day's visit to Mahad on January 17, 1970. One of these flags was hoisted on an electric pole in the Nawa Nagar locality. It was found to have been removed by somebody during the night of March 29, 1970. The Shiv Sena workers suspected Chandrakant Dhondu Sakpal and Sudhakar Balwant Patil, said to be two workers of Savant, of doing so. Thereupon some Shiv Sena workers accosted Chandrakant Sakpal, accused him of removing the said flag, slapped him in the face, assaulted him and told him that Dagdu Parte wanted to see him [P.W. 97/1(13)/3212(7-8), G.W. 11/1(30)/3398(13-4)]. In respect of the said assault, a case was registered as C.R. No. 390 of 1970 under sections 147, 341 and 323, I.P.C. (Ex. G 249). By his letter dated April 4, 1970 to the S.P., Kolaba (Ex. No. 70), Savant referred to the assault on Sakpal and alleged that Dagdu Parte, the Shakhpramukh of the Mahad Taluka Branch of the Shiv Sena, and Madhukar Pawar, the Shakhpramukh of the Mahad Shahar Branch of the Shiv Sena, were carrying on bootlegging activities and that for the said reason they had very cordial relations with the local police and the Police were shielding them. In particular Savant complained in the said letter against H.C., Shinde, who, according to Savant, when he (that is, Savant) had complained to him about the bootlegging activities of the local Shiv Sena leaders, had not done anything in the matter.

87.131 It is difficult to understand why party flags hoisted on public places, electric poles, etc., for a particular occasion should be permitted to remain there and the persons concerned should not be made to remove them the next day after the occasion is over. Allowing such flags to so remain is to leave around a potential source of mischief and trouble. A worker of another party might remove one of these flags, and resulting therefrom, an altercation is bound to take place and the public peace disturbed as happened in this case.

The Shiv Sena — Congress street brawls

87.132 On April 5, 1970 a Shiv Sena worker named Ramchandra Namdeo Sali was alleged to have been manhandled by two followers of Savant, namely, Sudhakar Balwant Mahadik and his brother Vinayak, on the suspicion that it was Sali who had pointed out Savant's house to the Shiv Sainiks on March 2, 1970, the day of the 'Mahad Bandh' called by the Shiv Sena. One Madhav Bhikaji Hendre, a friend of Sali, went to the spot to inquire about what had happened. He too was assaulted. In respect of these two incidents of assault two N.C. complaints were lodged at the Mahad Town Police Station, namely, N.C. C.R. Nos. 107 and 108 of 1970. Leading Shiv Sena workers, who had gone out of Mahad that day on a propaganda tour, learnt about the incident and on their return to Mahad at about midnight gathered in front of Mahadik's house, armed with stones, iron bars, etc. There was stone-pelting on both sides, but ultimately the police intervened and the situation was brought under control. In respect of this incident a case was registered, namely, C.R. No. 40/70 under sections 143, 147, 149, 336, 426, 504 and 506, I.P.C. Sudhakar Mahadik was arrested

under section 151, Cr.P.C. on April 6, 1970 and proceedings under section 110, Cr.P.C. were instituted against him in the Court of the Sub-Divisional Magistrate, Mahad (Ex. G 250).

87.133 As a result of this constant friction between the followers of Savant and the Shiv Sainiks, the tension in the town became aggravated and accordingly the Police took precautionary steps by introducing round-the-clock patrolling for which an additional force of 4 armed head constables, 16 armed constables and one gas squad was sent to Mahad from the headquarters. Prohibitory orders under section 37(1)(3) of the Bombay Police Act, were also issued, to be operative from April 15, 1970 to April 29, 1970 [P.W. 97/1(13)/3212 (8), G.W. 11/1(31)/3398(14)].

The Congress pamphlet

87.134 Ninety-six Congress workers of Mahad-Poladpur area, residing at Bombay, published on April 15, 1970 a Marathi pamphlet dated March 25, 1970 (Ex. G 267). The said pamphlet protested against the Shiv Sena criticism of Savant. It eulogized Savant and his services in hyperbolic terms and criticized and attacked the Shiv Sena. The said pamphlet *inter alia* stated:

“The Shiv-Sena has now 'gone to the length of making vile criticism against the M.L.A. SHRI DADASAHEB SAVANT who is known for his noble character, selflessness, intrepidity, frankness, dedication to public service and scholarship. THIS CRITICISM, HOWEVER, HAS ONLY SUCCEEDED IN EXPOSING THE REAL DESIGNS OF THE SHIV SENA WHOSE APPEARANCE IS AS DECEPTIVE AS THAT OF THE SHE-DEMON, POOTANA the MATERNAL AUNT. Through the columns of their cartoon weekly the 'Marmik', which is known for its mischievousness and for slandering, a detestable and vile criticism is levelled against Shri Dadasaheb Savant, the M.L.A. who is known to be faultless. He is being subjected to vituperation and threats through pamphlets and anonymous letters. We, the devoted workers who have got great love and respect for our M.L.A., Shri Dadasaheb Savant, cannot bear to see this mud-slinging unconcerned and so we are expressing our protest of the Shiv Sena through this pamphlet and are accepting hereby the challenge of the Shiv Sena concerning the election in 1972 in the Mahad constituency.”

The P.S.P. morcha

87.135 On April 30, 1970, the P.S.P. took out a “morcha” to the Tahsildar's office to demand an immediate solution of the Maharashtra-Mysore boundary issue. The said “morcha” passed off peacefully. The S.P. was personally present at Mahad on that day. Adequate police bandobast was kept in the town on that occasion because, in the words of D.M., Savanur, “Since the P.S.P. leaders at Mahad had been with the Shiv Sena group in the dispute about “Mahikawati”, there was necessity of being vigilant about any incident touching

Hindu-Muslim relations" [P.W. 98/1(28)/3243(8)]. Khan has also stated that adequate bandobast had to be maintained in the town at the time of the said "morcha" as the P.S.P. leaders had espoused the Shihv Sena cause in the preceding months. When asked by Savant in cross-examination to specify which P.S.P. leaders he had in mind, his answer was that the P.S.P. leader he had primarily in mind was S. G. Tipnis [P.W. 97/1(4)/3212(8), 49/3310].

The Shiv Jayanti celebrations

87.136 After the said Shiv Sena public meeting held at Mahad on February 22, 1970 Shiv Sena monopolized the celebration of all Hindu festivals. On May 7, 1970 the Mahad Branch of the Shiv Sena took out a Shiv Jayanti procession and held a public meeting. This was the first Shiv Jayanti procession to be taken out in Mahad. This topic will be dealt with in a separate chapter.

The final act

87.137 The last act of the Shiv Sena drama in Mahad was the spreading of a rumour by some local Shiv Sena leaders and workers that some Muslims had beaten up the police constables on duty at the disputed structure, and had removed the flag therefrom. As this rumour was the immediate or proximate cause of the communal disturbances which took place at Mahad on May 8, 1970, this topic also will be dealt with in a separate chapter.

Whether Savant instigated Bal Thackeray

87.138 Both Dr. Mrs. Kazi and Surba Tipnis have alleged that Bal Thackeray was instigated by Savant to take up "the Mahikavati issue" in his speech of November 2, 1970. Dr. Mrs. Kazi has deposed (M.F.W. 1/33/3333):

"I was annoyed at the speech made by Bal Thackeray on November 2, 1969 but not so much at him because he had nothing to do with Mahad but because he could not have made this speech unless somebody from Mahad, who did not have the guts to break a coconut at the disputed site, had instigated him. I was informed that this instigation was by S. B. Savant because he failed to get this site in 1961."

Tipnis has deposed (C.W. 47/7/3957):

"After the Durgadi incident, Arun Mehta and Manohar Joshi had visited Mahad. Manohar Joshi met Savant and Savant suggested to him that just as they had acted in the case of Durgadi, they should act in the case of Mahikavati. It was after this talk that Bal Thackeray declared at Chowpatty that he was going to repeat the same force at Mahad."

Tipnis was questioned on the source of his information and his reply was as follows (C.W. 47/11/3969-70):

"I learnt about the talk which Savant had with Manohar Joshi and which is deposed to by me in paragraph 7 of my deposition

because when Arun Mehta and Manohar Joshi came to Mahad after the Durgadi incident, there was immediately a rumour in the town that they had come in connection with the disputed structure and that Manohar Joshi had met Savant who had told him that just as the Shiv Sena had acted in the case of Durgadi, it should act in the case of the disputed structure. This is my only source of information about the talk between Savant and Manohar Joshi."

87.139 No reliance can be placed upon the said allegation made by Dr. Mrs. Kazi and Tipnis. We have already seen that Dr. Mrs. Kazi is inimical to Savant and she has attempted in her evidence to discredit him, for, according to her, he was responsible for misleading the Muslims of Mahad, including her husband, into handing over the disputed property to the Government. She has described his attitude as being "most un-Congress-like", and it was because of her differences with Savant that she left the Congress in 1970. Tipnis is a political opponent of Savant and the respective affidavits and depositions of Savant and Tipnis reveal that they bear considerable animus against each other. In fact, Tipnis's affidavit is more an anti-Savant tirade. The entire conduct of Savant throughout makes the truth of the said allegation improbable. It was Savant who in 1959 wanted to convert the disputed property into a public garden. He has been throughout consistent in his attitude that the disputed property should be turned to a secular public purpose and this was the thesis he canvassed in his said article published in the 24th January 1970 issue of the "Navshakti" (Ex. P 1075). Savant was too seasoned a politician not to have understood the admiration and popularity which Bal Thackeray and the Shiv Sena had got by reason of the Durgadi Fort incident and it is not likely that he would invite Bal Thackeray to come to Mahad to repeat the performance and thus win for himself the admiration of the Hindus of Mahad and gain for the Shiv Sena a strong foothold in Mahad which would only be to the political detriment of Savant. In support of the said allegation reliance was placed upon the speech of Manohar Joshi at the said Shiv Sena meeting held in Mahad on February 22, 1970 (Ex. P 1084) in which Manohar Joshi, while administering a warning to Savant for his anti-Shiv Sena attitude, had stated that he and Savant were acquainted for a long time. Savant has in his cross-examination deposed to the extent of his acquaintance with Manohar Joshi. He has stated (C.W. 29/35/3268-9):

"I have never met Bal Thackeray. Manohar Joshi comes from my district and I had met him once in the Bombay Municipal Corporation Hall. This was sometime in the end of 1969 or the beginning of 1970. He had sent word to me through a friend that he wanted to see me and that is why I went and saw him. We talked about the disputed site. The talk I had with him was definitely after November 1969 and probably also after January 17, 1970.

Q.: Did you invite the Shiv Sena to Mahad to solve the dispute ?

A.: No. On the contrary, I tried to persuade Manohar Joshi and told him that I was trying to persuade the Muslims to hand over the disputed site and that either a garden or a statue of Shivaji would be built on that spot but that there should be no agitation for either a mosque or a temple."

It was put to Savant that he had seen Bal Thackeray and Manohar Joshi to present them with a complimentary copy of his book. He denied that he had personally presented any book to Bal Thackeray. He admitted that he had given to Manohar Joshi a complimentary copy of his book on the Maharashtra-Mysore boundary dispute and he might have given him another complimentary copy for Bal Thackeray (C.W. 29/36/3294). Merely from the fact that Savant presented a complimentary copy of his book to Manohar Joshi and might have given him another complimentary copy for Bal Thackeray it cannot follow that he instigated Bal Thackeray to take up the question of the disputed property in his Chowpatty speech. The Shiv Sena was consistently agitating about the Maharashtra-Mysore boundary dispute and there could be nothing unnatural in Savant presenting to the Shiv Sena leaders (with the pardonable pride of an author) complimentary copies of his book on the said subject.

87.140 If the said allegation against Savant were true, one would have expected him to rejoice over what had happened and to take a leading part in the Veereshwar Temple meetings and to become a member of the Temple Committee just as several of the local Jan Sangh and P.S.P. workers and some of the Congress workers had done. On the contrary, it was Savant who started the counter-propaganda against the proposal to construct a temple on the disputed property and by his efforts brought about the dissolution of the Temple Committee and the surrender of the disputed property by the Muslims to the Government. Far from rejoicing over what had happened on January 17, 1970, which would have been the case had he been responsible for Bal Thackeray coming to Mahad, his reactions, in the words of Dr. Baburao Mehta, were that he "felt that due to the hoisting of the Bhagwa flag by Shri Thackeray, his (Savant's) prestige in the town was lost" [C.W. 46/1(8)/3952(6)].

Whether Dr. Baburao Mehta or S. G. Tipnis instigated Bal Thackeray

87.141 Savant alleged in his speech made at the said public meeting addressed by him on February 27, 1970 (Ex. P 1086) that the person responsible for bringing the Shiv Sena to Mahad was Dr. Baburao Mehta. In the course of this speech he said:

"One man is responsible for bringing the Shiv Sena here and I would not mind mentioning his name. He is Dr. Mehta. He had no reason to call the Shiv Sena here, but when the Shiv Sena encroached on Durgadi Fort at Kalyan his Hinduism was aroused and through his son Arun Mehta he wrote a letter to Bal Thackeray and informed him about this."

Ibrahim Chichkar in his affidavit has alleged that it was at the instance of some persons from Mahad "probably Dr. Baburao Mehta and Shri Surba Tipnis" that Bal Thackeray took up the question of the disputed property in his Chowpatty speech [C.W. 30/1(5)/3270(2)]. Dr. Mehta has denied that he had at any time written any letter to Bal Thackeray. He has also denied that he had at any time written to his son Arun Mehta about the Durgadi incident or about the disputed structure (C.W. 46/11/3961). But as Dr. Mehta has in his evidence prevaricated most of the time and has told so many untruths, it is not possible to accept his denial. Though there is no direct evidence to prove the said allegation of Savant and Chichkar, the said allegation seems probable in view of the fact that Dr. Mehta completely identified himself with the cause espoused by the Shiv Sena with respect to the disputed property and was the leading and motivating force of the Temple Committee and had played host to the Shiv Sena leaders both on January 17, 1970 and February 22, 1970. It was because of this that the D.M., the D.I.G. (B.R.) and the other officers had sent for him on February 22, 1970 and he had assured them that there was not going to be any trouble in Mahad and had requested them to modify the said prohibitory order banning entry into Mahad. He had also waited along with the D.M. and the S.P. at Kemburli Naka from 4 p.m. to 6 p.m. on February 22, 1970 and requested the Shiv Sainiks to enter Mahad by the S.T. Stand Road and not via Bunder Naka (C.W. 46/9/3959). This could only have been because he expected the Shiv Sainiks to listen to him and obviously the Shiv Sainiks listened to him for they knew his great sympathy and support for their cause. At the same time it must be mentioned that Dr. Mehta's son Arun Mehta also hails from Mahad and Manohar Joshi comes from village Nandavi in Mangaon Taluka of Kolaba District and, as declared by him in his speech at the said public meeting held on February 22, 1970, was educated in Mahad (C.W. 47/26/3975, Ex. P 1084). They both would, therefore, be familiar with the disputed property and, being two of the Shiv Sena leaders, would naturally be on the look out for any matter which could be turned into a cause or an issue to the political benefit and advantage of the Shiv Sena. They or either of them could have, therefore, easily apprised Bal Thackeray about the disputed structure.

87.142 So far as Tipnis is concerned, the role played by him is not very happy. Though in the course of his evidence, he has attempted to profess complete indifference and disinterestedness in communal matters and the disputed property, his sympathy with and support for the Shiv Sena on "the Mahikavati issue" are obvious. He attended the said public meeting of the Hindus held in the Veereshwar Temple on January 23, 1970 on hearing the announcement of this meeting in the streets. The reason given by him for attending this meeting is that all Hindus were asked to attend and since he was a Hindu, he attended [C.W. 47/1(23)/3965(14), 7/3968, 17/3972, 22/3972]. He admitted that the theme of the speeches by the Jan Sangh workers

and other Hindus at the said meeting was that a temple should be constructed on the disputed property. He expects us to be so naive as to believe him when he says that he did not at that time realize that the construction of a temple on the disputed property would lead to tension between the Hindus and the Muslims. He has deposed that he was against constructing a temple in a locality which was not a Hindu locality, but admitted that he neither opposed this proposal nor pointed out this fact to the meeting and he seeks to excuse himself on the ground that he "was not particularly interested in this matter"! On the other hand, the substance of his speech, in his own words, was that this was a serious question and that he was old but if they wanted to tackle the question, they should do it peacefully. He states that he had not intended to speak at that meeting, but so many people asked him to speak that he ultimately got up and spoke (C.W. 47/7/3968, 22/3973). This shows in what respect the audience held him and the weight it attached to his opinions. The guidance given by him to the said meeting can only be deprecated, for the only construction which can be put upon his speech is that it was an encouragement to the proposal to construct a temple on the disputed property. He and Bal Thackeray both belong to the Chandraseniya Kayastha Prabhu (C.K.P.) caste. In his affidavit he has proudly mentioned the name of various eminent persons who belong to this community and has claimed that this community has become the leader of the non-Brahmin communities [C.W. 47/1(7)/3965(4), 1(2)]. The evidence shows that Tipnis had visited Bal Thackeray's residence in October 1969. Tipnis was the Chairman of the Reception Committee of the Conference of the C.K.P. community held at Mahad on January 17, 1970. He denied that he had invited Bal Thackeray to the conference. This denial does not carry any conviction. Tipnis had come to Bombay to organize the said conference. He has testified that he invited Acharya Bhise and Keshavrao Thackeray (Bal Thackeray's father), both of whom had presided over earlier conferences, to this conference. He had gone to their residence for this purpose. When further pressed, he had to admit that Keshavrao Thackeray and his son Bal Thackeray resided together at Bandra (C.W.47/16/3971). It is very likely that on this occasion he had met Bal Thackeray also and had talked with him. The conversation could have turned to the role played by Bal Thackeray in the Durgadi Fort incident and from that topic to the subject of the disputed structure. October 1969 is too close to November 2, 1969, the day on which Bal Thackeray made his Chowpatty speech. It can also be that this proximity of dates is just a coincidence.

87.143 The S.P. has charged Tipnis with espousing the Shiv Sena cause [P.W. 97/1(14)/8212(8), 49/3310]. Today, in order to disassociate himself from the Shiv Sena, in the witness-box, Tipnis has gone to the length of stating that he did not know whether any member or members of the Shiv Sena had joined the Shahar Seva Samiti (C.W. 47/9/3969), an astonishing statement when we remember that he had been a member of the said Samiti ever since it was formed in 1957.

It is also significant that he has presented us with the somewhat strange and unusual spectacle of a P.S.P. leader presiding over a function organized by the Shiv Sena, namely, the public meeting in Mahad held after the Shiv Jayanti procession on May 7, 1970. His sympathy with the Shiv Sena and the cause espoused by it is thus obvious.

Who instigated Bal Thackeray ?

87.144 All the circumstances of the case negative the possibility that it was S. B. Savant who set up Bal Thackeray to make a communal issue of the disputed structure. In the absence of any direct evidence, however, it is not possible to say with any definite certainty whether the person who in fact instigated Bal Thackeray to make an announcement about the disputed structure in his speech delivered at Chowpatty on November 2, 1969 was Dr. Baburao Mehta through his son Arun Mehta or S. G. Tipnis or Manohar Joshi or even someone else from or having connection with Mahad.

Conclusions

87.145 The evidence led before the Commission has established the following facts in respect of the points dealt with in this chapter :

- (1) The counter-propaganda carried on by S.B. Savant resulted in tension between the Congress and the Shiv Sena workers which reached its climax on February 22, 1970.
- (2) It was an error of judgment to have promulgated the order dated February 15, 1970 under section 144, Cr.P.C. totally banning the entry of the Shiv Sainiks and their leaders into Mahad. The same object could have been achieved by issuing an order banning the entry of the Shiv Sainiks from Kemburli Naka on the western side and from Pimpalpar Naka on the eastern side, thus leaving it free for the Shiv Sena leaders and workers to enter Mahad by the S.T. Stand Road and hold a public meeting at the Azad Maidan.
- (3) The Shiv Sainiks believed that it was S. B. Savant who was responsible for the promulgation of the said prohibitory order dated February 15, 1970.
- (4) The communal situation in Mahad changed completely as a result of the decision taken at the meeting of the Muslim Jamaat, Mahad, held on February 18, 1970, to hand over the disputed property to the Government on condition that a temple or any other thing harmful to the religious feelings of both communities should not be constructed thereon and by the handing over of the said letter of surrender or relinquishment dated February 19, 1970 by Shujauddin Kazi and others to the Chief Minister and the publication of the reports thereof in the newspapers.
- (5) The aforesaid decision taken by the Muslims was the result of the efforts made by Savant and the advice given by the then Minister of State for Law, Judiciary and Education, Mr. A. R.

- Antulay, to those amongst the Muslim leaders who were objecting to this move, including Babu Mopla, Ahmedshah Dingankar, Hasan Miya Pansare, Umarmhan Chichkar and Abdul Kadir Kablay.
- (6) The said letter of surrender or relinquishment did not have any legal validity. This aspect, however, was not present to the mind of anyone except the Government. The Government, realizing the correct position in law, did not take possession of the disputed property.
 - (7) So far as the general public was concerned, it treated the said letter of surrender or relinquishment as being legally valid. The said letter of surrender removed the very basis for a communal agitation in Mahad. The Shiv Sainiks considered S. B. Savant responsible for this turn of events.
 - (8) On the night of February 20, 1970 the 'gilaf' in the Shah Bahiri Dargah was taken away and the slogan "Bajao Pungi, Hatao Lungi" was written on the outer wall of the said Dargah.
 - (9) The removal of the "gilaf" from the Shah Bahiri Dargah, the writing of the slogan "Bajao Pungi, Hatao Lungi" on the outer wall of the said Dargah, the repeated threats by the Shiv Sena leaders given in their speeches made during the course of the Ratnagiri tour to defy the order under section 144, Cr. P.C. prohibiting entry into Mahad, and the fear of what might happen if they did so filled the Muslims of Mahad with panic and a number of them sent their families out of Mahad.
 - (10) In the light of the threats given by the Shiv Sena leaders in the course of their speeches made during the Ratnagiri tour and in view of the various rumours circulating in the town, it was an error of judgment to modify the aforesaid prohibitory order by the order dated February 22, 1970 and to restrict the ban only to the western part of the town. The modification of the said order created an impression in the public mind that the administration had succumbed to the threats of the Shiv Sena. It enhanced the prestige of the Shiv Sena and its Chief and caused the administration and the Police to lose face and it shook the confidence of the public in the ability of the administration and the Police to maintain law and order. Had the said order dated February 15, 1970 not been modified on February 22, 1970, the incidents which took place outside Savant's house that evening creating a law and order problem would not have taken place.
 - (11) The incidents which took place outside S. B. Savant's house in the evening of February 22, 1970 were provoked by the Shiv Sainiks who considered that Savant was responsible for the Muslims handing over the disputed property to the Government and for the promulgation of the order dated February 15, 1970 under section 144, Cr. P.C. prohibiting their entry into Mahad.

- (12) Adequate police protection was afforded to S. B. Savant on February 22, 1970. Additional reinforcements were sent when necessary. Had it not been so, a serious riot would have occurred at that place.
- (13) It was not necessary for the S.P. personally to go and take charge of and supervise the bandobast near Savant's place in view of the fact that the S.D.P.O. and other police officers were present on the spot.
- (14) The decision to modify the said order dated February 15, 1970 was not taken at district or local level but was taken in Bombay. In view of the reticence in the witness-box of the officials concerned to reveal the truth on this point, it has not been possible to ascertain who was the actual person responsible for taking this decision.
- (15) As a result of what happened on February 22, 1970, the tension between the Shiv Sena and the Congress workers became intensified.
- (16) The attack made by Savant against the Shiv Sena and Bal Thackeray in his speech at the public meeting held on February 27, 1970 incensed the Shiv Sainiks. An anonymous letter of threat was sent to Savant and a personal attack was made against him in the 27th March 1970 issue of the Shiv Sena Marathi weekly the 'Marmik', which was retaliated in a pamphlet dated March 25, 1970 published on April 15, 1970 (Ex. G 267) purporting to be by 86 Congress workers of Mahad-Poladpur area residing in Bombay.
- (17) The suspicion that two workers of Savant had during the night of March 29, 1970 removed the Shiv Sena flags hoisted on the electric pole in Navanagar locality led to incidents of assaults and counter-assaults between some Shiv Sena and Congress workers in the end of March 1970 and the beginning of April 1970.
- (18) The flags put up by the Shiv Sena for the visit of Bal Thackeray should not have been allowed to remain after the occasion was over, but the organizers of the local Shiv Sena branch should have been made to remove the flags the next day from all public places and electric poles.
- (19) S. B. Savant did not instigate or set up Bal Thackeray to make a communal issue out of the disputed structure.
- (20) It is not possible to give any definite finding as to who was the person who set up Bal Thackeray to make a communal issue of the disputed structure. The possibilities are that it was S. G. Tipnis or Dr. Baburao Mehta through his son Arun Mehta or Manohar Joshi or Arun Mehta or some other persons from or having connection with Mahad who did so.

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CHAPTER 88
THE MUSLIMS AND THE DISPUTED STRUCTURE

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Paragraph

- 88.1 The Muslim agitation for return of the disputed property.
- 88.7 The 'Maharashtra Muslim'.
- 88.8 The editorials and articles in the 'Maharashtra Muslim'.
- 88.12 Conclusions.

CHAPTER 88

THE MUSLIMS AND THE DISPUTED STRUCTURE

The Muslim agitation for return of the disputed property

88.1 We have seen in chapter 87 that a section of the Muslims in Mahad were opposed to handing over the disputed property to the Government and that when there was no unanimity amongst the members of the Muslim Jamaat, Mahad, on this point, the then Minister of State for Education, Law and Judiciary, Mr. A. R. Antulay, had to intervene. He sent for Abdul Kadir Shaikh Hasan Kablay (M.M.W. 3), Hasan Miya Pansare, Umarchan Chichkar, Shaikh Babu Maple *alias* Babu Mopla, Ahmedsaheb Dingankar and some others and met them at Village Ambet. These Muslims thereupon acquiesced for the time being in the advice given by Mr. Antulay as is seen from the resolution of the Muslim Jamaat, Mahad, passed on February 18, 1970 (Ex. MM 2). They, however, did not get reconciled to this position and very soon thereafter commenced an agitation for the return of the disputed property by the Government to the Muslims. As is shown by the report dated May 2, 1970 made by Taluka Executive Magistrate Joshi (Ex. P 1133), the trustees of the Jumma Masjid Mahad Bunder (Padki Masjid) Public Trust objected to handing over possession of the disputed property to the Government. Savant has deposed that Babu Mopla, Ahmedsaheb Dingankar and Dr. Mrs. Kazi were the leaders of the fanatical section of the Muslims in Mahad (C.W. 29/21/3263). In cross-examination Dr. Mrs. Kazi has denied that she was the leader of the group which wanted the disputed property to be returned to the Muslim Jamaat and has disclaimed all knowledge of the identity of the persons who started the agitation that it should be so returned. She has, however, categorically admitted that she was against the Muslims parting with possession of the disputed property and that there were two groups amongst the Muslims in Mahad, one Savant's group and the other of those who were opposed to his policies, not only with respect to the disputed property but on almost all points, and that in 1970 she left the Congress because of the attitude of Savant which, according to her, was "most un-Congress-like". Her evidence shows that she felt very strongly on the question of the disputed structure and when on January 17, 1970 as Bal Thackeray was going upto the disputed structure, she left her house and started crossing the road to go upto him to protest and to show him the judgment of the City Survey Officer and Mamlatdar (Ex. P 1061) whereby he had refused to substitute the name of the Mahad Municipality in place of the Muslim Jamaat, Mahad, in

the revenue and city survey records, her husband stopped her and took her back to the house (M.M.W. 1/4/3320, 16/3325, 22/3327, 29/3329, 32/3331). Admittedly, she used to complain to the S.P. and S.D.P.O. whenever she felt aggrieved, as is shown by her complaint against P.S.I., Vichare and the evidence of Khan that she used to ring him up very often over the slightest incidents (P.W. 97/11/3229). It is, therefore, not possible to believe that she played merely a silent or a subsidiary role when she realized that the Muslims were handing over the disputed property to the Government. On the contrary, the evidence shows that she wrote articles in newspapers and periodicals protesting against this move. Her first article was published in the 17th February 1970 issue of the Urdu daily the "Aaj" and was reprinted in the 22nd February 1970 issue of the Urdu fortnightly the "Rehnuma-e-Millad" (Ex. MM 1) in which she indignantly described the incident of January 17, 1970 and violently objected to the surrender of the disputed property to the Government and called upon the Government to stop the move by the Shiv Sena and the Hindus of Mahad to take over the disputed property. Her next article was published in the 24th April 1970 issue of the "Maharashtra Muslim" (Ex. No. 75). The tenor of this article was very much the same as that of her first article.

88.2 In order to denigrate Savant's efforts Dr. Mrs. Kazi has stated in her affidavit that in spite of the surrender of the disputed property by the Muslims to the Government, the tension in the town did not calm down but on the contrary there was a regular propaganda made by the leaders of the Shiv Sena and the Jan Sangh of Mahad that the Muslims had deliberately surrendered the disputed property to the Government in order to defeat the rights of the Hindus as it was impossible for the Hindu community to get back the disputed property from the Government [M.M.W. 1/1(27)/3317(14)]. The other evidence on the record, however, does not bear her out. It clearly shows that the communal tension did abate considerably after the letter of surrender by the Muslims and the tension which prevailed in the town was more as a result of the Shiv Sena-Congress animosity. Some of the Hindu local leaders might have felt piqued at the Muslims for taking away from them what was a handy communal issue, namely, the disputed property, but their anger was directed more towards Savant, whom they held responsible for this, than towards the local Muslims.

88.3 So far as Bapu Mopla is concerned, he was a supporter of Savant before the controversy about the disputed structure arose in 1969 (C.W. 29/32/3268). He and Ahmedsaheb Dingankar were amongst those who were sent for by Mr. Antulay to persuade them to agree to handing over the disputed property to the Government.

88.4 It is, therefore, clear that Dr. Mrs. Kazi, Bapu Mopla and Ahmedsaheb Dingankar did play an important part in the Muslim counter-agitation about the disputed property.

88.5 Apart from the articles and editorials in newspapers and journals some Muslims, without holding a general meeting of the

Muslim Jamaat, made a petition to the Chief Minister praying that the disputed property should be returned to the Muslims. The authors of the said petition went from house to house collecting signatures and carrying on a propaganda that the Muslims should get back the disputed property. Shujauddin Kazi's evidence, which has not been challenged on this point, shows that they, however, took care to see that Shujauddin Kazi, Ibrahim Ahmed Taj, Hasan Shahabuddin Pansare, Alimiya Gantare and Ebrahim Chichkar, who were selected at the said Jamaat meeting held on February 18, 1970 to hand over the said letter of surrender to the Chief Minister, should not come to know about it [C.W. 31/1(11)/3276(8)].

88.6 The making of the said petition and the publication of editorials and articles in the weekly 'Maharashtra Muslim', which will be referred to a little later, in the words of Shujauddin Kazi, caused "excitement among the Hindus from Mahad and they lost their faith in the Muslims from Mahad and the issue regarding the said place which was about to be solved again became a topic of discussion" [C.W. 31/1(11)/3276(8)].

The 'Maharashtra Muslim'

88.7 The 'Maharashtra Muslim' was a Marathi weekly published irregularly from Bombay. It had some circulation in Mahad [G.W. 11/1(33)/3398(50)]. Its first issue was published in February or March 1970 and it stopped publication after the disturbances of May 1970. Its assistant editor was Khalil Kazi, Shujauddin Kazi's paternal uncle's son. Khalil Kazi was a resident of Village Tempale situate about seven miles from Mahad. Its editor was Taher Bedade [C.W. 29/1(25)/3252(24-5), C.W. 31/11/3278, M.M.W. 1/13/3324]. Savant has stated in his affidavit that those Muslims of Mahad who were opposed to the handing over of the disputed property to the Government "found vociferous support in Tamir-E-Millat workers of Bombay, some of whom paid visits to Mahad. These people started a weekly known as the Maharashtra Muslim' in February 1970, which started inciting the Muslims of Mahad not to part with the disputed land" [C.W. 29/1(25)/3252(24)]. There is, however, no mention in any police records of a visit of any worker of the Majlis Tamir-E-Millat to Mahad (P.W. 97/30/3240), which would not have been the case if any of them had in fact visited Mahad, nor is there any evidence, apart from the said allegation of Savant, that the persons who started the 'Maharashtra Muslim' belonged to the All-India Majlis Tamir-E-Millat (the M.T.M.). In cross-examination Savant has deposed (C.W. 29/34/3268):

"I do not now remember who gave me the information that some of the M.T.M. workers of Bombay had paid visits to Mahad. Those who informed me were both Hindus and Muslims, but I do not remember their names. I was not perturbed when I learnt about it. I took it as another incident we would have to deal with. I did not try to verify this information from the Police."

In view of the above answers and the absence of any evidence in support of this allegation, the said allegation cannot be accepted.

The editorials and articles in the 'Maharashtra Muslim'

88.8 The editorial in the 6th March 1970 issue of the 'Maharashtra Muslim' was headed "Warning to the Government of Maharashtra in the matter of the Mosque-Temple at Mahad" (Ex. P 1089). In the said editorial the Government was called upon to return the disputed property to the Muslims and to provide protection to the Muslims of Mahad. The editorial in the 24th April 1970 issue of 'Maharashtra Muslim' (Ex. P 1092) entitled "Under whose pressure did the Muslims from Mahad hand over the said land to the Government of Maharashtra?" described the visit of the editor of the 'Maharashtra Muslim', accompanied by Khalil Kazi, to Mahad. It described the disputed structure and referred to four constables guarding it. It then continued :

"Or is it that the Government of Maharashtra is acting as the page of the Shiv Sena? Or is it that the Shiv Sena is to plant the flag and the Government of Maharashtra is to protect the flag as commanded by the Huzur Chhatrapati Shri Thackeray, the protector of the cows and the Brahmins and the founder of Hindu temples? Can it be called a Government? Instead of all that, why do they not hand over the reins of the Government to Shri Thackeray himself?"

"GAGGING THE MUSLIMS"

"There are about 200 Muslim families at Mahad. Most of these people are poor but they are not cowards and they are not people doing injustice or creating disturbances. Four or five prominent Muslims from Mahad had approached a very trusted leader with the object of explaining their just stand and of getting some guidance from him.

"That leader intimidated those Muslims and those poor fellows could not give him any reply. Not only one or two but several frightening questions such as "Why do you require that place? Will you take the responsibility if your houses are burnt and communal disturbances break out?" were put by him with the airs of a teacher threatening a student as in a farce. This injustice has been forced on them by intimidation. We are writing all this on the strength of the information gathered from several respectable persons and ordinary young and old men of Mahad in meetings held with them."

88.9 The said editorial then referred to the Muslim families leaving Mahad and to the closing of Muslim businesses at the time of Bal Thackeray's visit to Mahad on January 17, 1970 and described these Muslims as cowards and not coming from good or respectable families. It compared the conduct of Dr. Mrs. Kazi with their conduct and congratulated her for her courage. It referred to her visit to the S.P. and her leaving her house to object to Bal Thackeray hoisting the flag. The said editorial then concluded with the following plea.

JUSTICE MUST BE DONE

“The Government of Maharashtra should return the said land of the Muslims as early as possible. Otherwise, this dissatisfaction will continue to burn in the minds of the members of the Muslim community and the responsibility for the consequences thereof will lie on the present cabinet.”

88.10 An article written by Dr. Mrs. Kazi (Ex. No. 75) headed “Repression by Maharashtra Government in Mahad Affairs” was also published in this issue. It also described the incident of January 17, 1970 and referred to Bal Thackeray as ‘Chengizkhan’ and ‘Aurangzeb’. After giving a description of the disputed structure and claiming that it was in the possession of the Muslims, the article made violent protest against the act of Bal Thackeray in breaking the coconut and hoisting the flag on the disputed structure. The said article concluded as follow:—

“Today the Muslim community alone is being oppressed the most. When persons belonging to other communities which are smaller in number than the Muslim community can live luxuriously, why such partiality against the Muslims only ?

“The Constitution of India provides full protection to the culture, religion and language of the minorities. They can develop and propagate their religion, language and culture.

“When that is the position, why do such incidents take place ? There is an unending chain of such communal riots. Why are the devilish attempts to take possession of the places of religious worship of the Muslims allowed to go on ? Can such incidents not be halted in time ? Can the sacred Constitution of the country be trampled upon in that manner ? Have the values enshrined in the Constitution any meaning or not ? Has the Government any responsibility or duty left ? Such incidents must be nipped in the bud or they are sure to ruin the country. That is the danger signal.”

88.11 Savant has stated in his affidavit (a statement not challenged in cross-examination) that the said editorials and Dr. Mrs. Kazi’s said article “emboldened the fanatics amongst the Muslims and infuriated the Hindus who had sobered down by the handing over of the land to the Government” [C.W. 29/1(25)/3252(24)].

Conclusions

88.12 The evidence led before the Commission on the points dealt with in this chapter has established the following facts:—

- (1) A section of the Muslims of Mahad was opposed to the surrender of the disputed property to the Government and resented the efforts in that behalf of S. B. Savant and the then Minister of State for Education, Law and Judiciary, Mr. A. R. Antulay.
- (2) Due to the intervention of Mr. A. R. Antulay, these Muslims temporarily acquiesced in the decision to hand over the disputed property to the Government.

- (3) As a result of the propaganda carried on by these Muslims and the signatures collected by them on the petition submitted by them to the Chief Minister and the agitation carried on in newspapers and periodicals, particularly in the 'Maharashtra Muslim', the reaction to handing over the disputed property to the Government became stronger. Dr. Mrs. Qamar Kazi was one of those who took a prominent part in this propaganda and agitation.
- (4) This reactionary swing on the part of a section of the Muslims revived the communal tension which had almost died out as a result of the said letter of surrender dated February 19, 1970 (Ex. P 1132). The Hindus considered that the Muslims had made a *volte face* and could not be trusted and once again there was mutual distrust and disharmony between the two communities in Mahad.

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CHAPTER 89
THE SOCIAL BOYCOTT OF THE MUSLIMS

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CHAPTER 89

THE SOCIAL BOYCOTT OF THE MUSLIMS

Prefatory observations

89.1 A peculiar feature of the communal disturbances in the Kolaba District was the social boycott of Muslims by the Hindus. This social boycott started at Village Kokban and spread to the surrounding villages in the Roha, Mhasala and Mangaon Talukas [G.W. 11/1(32)/3398(14)]. S. B. Savant has pointed out that the Muslims in these areas were almost entirely dependent upon the Kunbis and the Harijans for their agricultural and household work and the withholding of their labour from the Muslims would mean a complete collapse of the agricultural economy of the region and a virtual segregation of the Muslims from normal social life. Savant has dealt with this social boycott in his affidavit [C.W. 29/1(33-4)/3252(30-3)]. There is also on the record a note on the social boycott of the Muslims by the Hindus filed by S.P., Khan which is Exhibit P 1138.

The boycott

89.2 The social boycott of the Muslims commenced prior to the breaking out of the communal disturbances in Mahad and intensified after the disturbances spread in the Kolaba District. About fifteen or twenty years ago some Muslims of Village Kaire are said to have unauthorizedly slaughtered cattle. They had compromised the matter by paying a fine of Rs. 3,000 to the Hindus. A similar suspicion was the origin of this social boycott. How this boycott originated and its subsequent history has been succinctly summarized by I.G.P., Rajadhyaksha in the course of his evidence. The I.G.P. has deposed (G.W. 2/48/102-3):

“In village Kokban in Kolaba District a bullock belonging to a Hindu was missing since March 26, 1970. In the early hours of March 30, 1970 seven Muslims travelling in two bullock carts carrying beef with them were accosted by the Hindus on the ground that this was beef obtained by slaughtering the missing bullock. The Muslims denied this. The Hindus detained the seven Muslims. Another Muslim lodged a complaint against the persons detaining the seven Muslims. The P.S.I. who commenced investigation was a Muslim. Accordingly the Hindus boycotted the investigation. They also started a social boycott of Muslims, that is, not to make any purchases from a Muslim or not to sell to a Muslim and not to work for a Muslim. From Kokban the social boycott spread to other villages. Two M.L.As., Mr. D. N. Patil and Mr. P. R. Sanap, both

belonging to the P.W.P., later took a prominent part in organizing the boycott. They were both prosecuted under section 153A, I.P.C. Prior to this, four other workers of the P.W.P. were also prosecuted under section 153A on March 30, 1970 for activities in connection with the boycott. These activities were, however, carried out by them in their individual capacity. The authorities and several local leaders tried to have the boycott lifted but prominent workers of the P.W.P. in Kolaba District advocated its continuance. This social boycott was virtually lifted in the end of June 1970 but relations continued to be strained between the two communities. The Muslims who were carrying beef in the bullock carts claimed that they had slaughtered a bullock purchased by them. During the course of investigation the hide of the slaughtered bullock was shown to the owner of the missing bullock. The owner, however, could not identify the hide as being that of his missing bullock."

The Sarsoli meeting

89.3 In the course of the social boycott, a number of incidents took place and several meetings were held, all of which have been summarized in the said note Exhibit P 1138. One of these was a meeting held on April 19, 1970 at Sarsoli at which a committee of 15 persons, styled "Nirnaya Committee", was formed with P. R. Sanap as its President. Amongst those who were present at the said meeting were the P.W.P. M.L.As., P. R. Sanap and D. N. Patil, the P.W.P. worker, P. N. Patil and the Jan Sangh worker, L. B. Bhave, who wielded influence in the Agri community in the area of which the Muslim residents were supporters of the Congress. The following decisions were taken at the said meeting:—

- (1) The social boycott of the Muslims should continue so long as the Muslims did not apologize and did not give in writing that they would not indulge in unauthorized slaughter of bullocks.
- (2) The Hindus who co-operated with the Muslims should also be boycotted by the other Hindus,
- (3) The social boycott should be peaceful,
- (4) The Muslim leaders in Kolaba District, namely, Husseinshet Dabir of Roha, Ismailshet Yerunkar of Roha, Abdulla Yusuf Hafi of Pen, Vangureshet of Murud, Dr. Ahmedkhan A. Deshmukh of Mahad and Mr. A. R. Antulay, the then Minister of State, should negotiate with the Nirnaya Committee and give a bond of Rs. 50,000 in writing as a guarantee that the Muslims would not indulge in unlawful slaughter of cattle in future.

The Madhegaon meeting and the Battle of the Pamphlets

89.4 As a result of this social boycott, a number of Muslim families left their villages. On April 24, 1970 a board in Marathi was put up on the Roha-Murud Road asking the Muslims to leave the villages or else their lives would be in danger. On May 6, 1970, some

Muslim leaders led by Mahomed Saleh Ahmed Gite saw the Jan Sangh worker, L. B. Bhave, who told them that they would be required to pay a fine of Rs. 5,000 to the Hindu community.

89.5 The social boycott intensified after the May 1970 communal disturbances. On May 24, 1970, a public meeting of the residents of 84 villagers was held at Madhegaon in Taluka Mangaon, at which S. B. Savant was one of the speakers. While Savant and R. V. Mahalunge, who also belonged to the Congress, advocated the lifting of the boycott, Ramesh Shanker Deshmukh of the P.W.P., Bhaskar Sule and others did not agree to do so, but kept on demanding that the boycott should be continued until the Muslims of the Village Purar disclosed the names of the Muslim 'goondas'. A news report on the said meeting was published in the 30th May 1970 issue of the Marathi daily the 'Loksatta'. According to Tipnis, this news report was written by Savant and Tipnis gave a reply by publishing a Marathi pamphlet dated June 1, 1970 (Ex. No. 73). The said pamphlet blamed Savant for creating communal tension in Mahad. It stated:

"While several Muslim persons were trying by meeting various Hindu persons, to arrive at some sort of compromise in respect of the Mahikavati affair, Shri Savant took the stand of giving assurance to them in the words, 'in this matter you need not see anyone else except me, I alone or my Congress alone will give you protection in every way', and left the Muslim community in the lurch. Shri Balasaheb Thackeray came here on his own responsibility and went away after planting saffron coloured flag on the Mahikavati temple. But Shri Savant and his Congress were not seen anywhere at that time." After blaming the Congress for the communal disturbances which had taken place, the said pamphlet continued:

"Even the chapter of boycott was opened in the areas in which the disturbances had occurred. The Muslim brothers understood fully well that the party in power or their leader like Shri Savant of that party could not protect them in any manner."

It was then alleged in the said pamphlet that the said meeting at Madhegaon was called by Savant and his friends to regain the confidence of the Muslims. The said pamphlet then continued:

"Several persons thought that in that meeting Shri Savant would, as assured already, lift the alleged boycott. For this reason only, several Muslims had specially remained present at the said meeting. These included the persons from Purar and other adjoining places.

"On the day on which the disturbances occurred at Goregaon, a lorry belonging to one Muslim of Goregaon went to Purar region and brought several Muslim 'goondas' to Goregaon for assisting the Muslims of Goregaon. Are you people ready to give out the names of those goondas to the Honourable the Chief Minister Shri Vasant-rao Naik? Likewise is Shri Savant ready to hand over personally in the capacity of an M.L.A. to Shri Vasantraoji the list of the names of the persons given by the members of the Muslim community? The persons present in the said meeting put these questions to

Shri Sawant in that very meeting. No one represented any political party at that meeting. None belonging to the P.S.P. was present.” The reference to the questions put at the said meeting asking for the names of Muslim ‘goondas’ bears out what is stated about the said meeting in the said note Exhibit P 1138.

89.6 By way of a rejoinder to the said pamphlet several Congress workers published another pamphlet (Ex. No. 74). In this pamphlet the credit for the lifting of the boycott was given to Savant. In this pamphlet it was *inter alia* stated:

“It is surprising that Shri Tipnis boldly states in his pamphlet that no one belonging to the P.S.P. was present in the meeting held at Madhegaon. Chandrakant Adhikari whose description has been given in the ‘Navakal’ in its issue dated the 4th June 1970 as ‘Advocate Chandrakant Adhikari, leader of the P.S.P. in Goregaon region’ and who has given an interview to the daily the ‘Navakal’ as the leader of the P.S.P. was not only present in the meeting held at Madhegaon but had justified the social boycott of the Muslims in the hypocritical words, “social boycott means separatism brought about only with a view to avoid mutual conflicts”. Can Shri Tipnis hide this fact? By writing an article in the daily the ‘Navshakti’ in its issue dated the 5th June 1970 Shri Adhikari has himself clarified as to what he spoke in the said meeting. From that his hypocritical nature becomes clear. Should it be presumed that the P.S.P. of Shri Tipnis accepts the said justification given for the social boycott of the Muslims? Leave aside the article written by the advocate Shri Chandrakant Adhikari, but after reading carefully the pamphlet of Surba Tipnis himself one finds that he is also of the same mentality. He has admitted in his pamphlet that the M.L.A. Shri Sawant had called the meeting held at Madhegaon with a view to lift the boycott of the Muslims. However according to him, ‘The said meeting ended in a tragedy and it was a total failure’ and because of its failure Shri Tipnis is bursting with joy.”

The boycott and Surba Tipnis

89.7 In his affidavit Tipnis alleged that there was no boycott of the Muslims, but it was merely a rumour [C.W. 47/1(24-5)/3965 (14-5)]. In the witness-box at first he stuck to his story, but little by little he was forced to admit that a social boycott of the Muslims had taken place in various places. His evidence on this point speaks for itself. He has deposed (C.W. 47/13/3970):

“There was no social boycott of Muslims at any time. All that had happened was that on account of a scuffle in Goregaon in Mangaon Taluka on May 6, 1970 between two Muslim smugglers and two Hindu rowdies of Goregaon, suspicion was created between the two communities in Mangaon Taluka.

(Shown the following sentence from the leaflet Exhibit No. 73:—

“Even the chapter of boycott was opened in the areas in which the disturbances had occurred.”)

This was a leaflet written and published by me. On seeing the above sentence in it, I now think that there was a boycott of Muslims only in one place, namely, Village Harkole in Mangaon Taluka. I admit that in the above sentence I have referred to more places than one in which the boycott took place. I now say that a boycott of Muslims also took place in Roha Taluka."

His above testimony does not reflect and credit on him and is a pointer to the role he has played in the communal affairs of Mahad and the Kolaba District which he now seeks to disclaim.

The end of the boycott

89.8 On the recommendation of S.P., Khan, by his two orders both dated June 5, 1970, D.M., Savanur directed Ramesh Shankar Deshmukh and Bhaskar Santaji Sule *alias* Bhai Sule to be detained under section 3(1)(i) of the Maharashtra Detention Act, 1970. The grounds of detention (Exs. P 1136 and P 1137) were furnished to them the same day. In the grounds of detention of Ramesh Deshmukh (Ex. P 1136) it was *inter alia* stated that he along with Sule had instigated the Hindus in Mangaon and Mhasala Talukas to excommunicate the Muslim residents of that area by depriving them of the normal and usual services rendered by the Hindus and had been propagating and exciting the Hindus to carry on illegal and anti-social activities at public meetings held in Mangaon Taluka during May 1970 including the said meeting held at Madhegaon on May 24, 1970. In the grounds of detention furnished to Sule (Ex. P 1137), he was also charged with having instigated along with Ramesh Deshmukh the Hindus in Mangaon and Mhasala Talukas to excommunicate the Muslims and with propagating the social boycott of the Muslims at the meeting of the residents of 32 villages of Mangaon Taluka held at Lonere on May 15, 1970 and at the said meeting held at Madhegaon on May 24, 1970.

89.9 By an order dated June 16, 1970, the Government of Maharashtra approved the detention of both these persons. The said detention orders were, however, revoked on August 1, 1970 in pursuance of the opinion given by the Advisory Board on July 27, 1970 (P.W. 98/13/3249-50).

89.10 With the detention of these two persons and as a result of the efforts of Savant and the other Congress workers, the social boycott of the Muslims petered out.

Whether Mahad was affected by the boycott

89.11 Dy. S.P., Patankar has stated that this social boycott of the Muslims had no noticeable reaction in Mahad [G.W. 11/1(32)/3398 (14-5)]. S.P., Khan has also stated that the incidents which took place upto May 7, 1970 were localized incidents and did not create any tension in Mahad. It is difficult to accept what they have stated. The social boycott of the Muslims in several villages of nearby Talukas must cause a reaction in a town like Mahad which had become a communally sensitive spot and had been subjected to considerable

communal and political tension during the preceding six months. Savant has stated [C.W. 29/1(33)/3252(32)]:

“Some villages in Mahad Taluka too were affected by social boycott but we have succeeded in raising the boycott before any substantial mischief could be done.”

Ebrahim Chichkar has narrated in his affidavit his own experience of the boycott after the disturbances. He had normally six permanent servants and five or six servants on daily wages. For well over a week he could not get a single Hindu servant to do his work [C.W. 30/1 (23)/3270(13)].

89.12 In my opinion the social boycott of the Muslims in different Talukas of Kolaba District and the incidents which took place in the course of it prior to May 8, 1970, and the activities and efforts of several Hindu leaders in instigating such boycott were bound to have and did have an effect on the situation in Mahad and aggravated the tense communal atmosphere prevailing in that town.

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CHAPTER 90
THE GOREGAON RIOT
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- 90.2 Measures to deal with the Goregaon riot.
- 90.3 Preventive measures at Mahad.
- 90.4 The effect of the Goregaon riot in Mahad.

CHAPTER 90

THE GOREGAON RIOT

The riot at Goregaon

90.1 Goregaon Village is situate in Mangaon Taluka at a distance of about thirteen miles from Mahad. In the morning of May 6, 1970 a riot took place between Hindus and Muslims at Goregaon. Though the two factions belonged to the opposite communities, this was not in reality a communal riot, for it was the result of a rivalry between two groups, one led by two Hindu truck drivers from Goregaon who were brothers and the other led by two Muslims from a nearby village, namely, Tempale Village, situate about seven miles from Mahad, who were carrying on transport business. The riot took place as other Hindus and Muslims joined in the quarrel. The Police suspected that the quarrel was over some smuggling transaction, but were unable to gather evidence to substantiate their suspicion. One Muslim was killed and four Muslims and five Hindus were injured in this riot. Property of the value of Rs. 17,500, including a truck, a bullock cart and a hand-cart, was damaged, out of which property of the value of Rs. 17,000 belonged to the Muslims and of the value of Rs. 500 belonged to the Hindus.

Measures to deal with the Goregaon riot

90.2 On learning about the riot at Goregaon, the S.D.M., Mahad, went to Goregaon and promulgated an order under section 144, Cr. P.C. Dy. S.P., Khan, the S.D.P.O., Mahad, also went to Goregaon with a police party consisting of two sub-inspectors, four head constables and twelve constables who were posted at Mahad as a precautionary measure [P.W. 105/1(7)/3418(2)] Before he left for Goregaon the S.D.P.O. left instructions for C.P.I., Saluke to take proper precautions and to maintain bandobast with the policemen available to him. On learning about the riot, S.P., Khan, who was then at Panvel in connection with the Shiv Jayanti celebrations, immediately left for Goregaon with a police party, reaching Goregaon at about 4-30 p.m. Before leaving for Goregaon, Khan instructed his Home Police Inspector on the telephone to alert all officers in charge of the police stations in the District to have police patrols in mixed localities and at known trouble spots within their areas. A telephonic alert to this effect was accordingly sent out by the Home Police Inspector, Alibag. On reaching Goregaon, Khan rounded up the offenders, organized searches and took precautions to prevent further trouble. Three offences were registered in connection with this riot and 33 persons, of whom 20

were Hindus and 13 Muslims, were arrested and charge-sheeted. A strict watch and bandobast was maintained at Goregaon that day as also on the next day, namely, on May 7, 1970, and the S.P. camped there on both these days. The D.I.G., Training and Special Units, Kadambande (G.W. 13), arrived at Goregaon at 3 a.m. on May 7, 1970. Reinforcement was requisitioned and two platoons of S.R.P. men reached Goregaon early on May 7, 1970 [P.W. 97/1(16)/3212(9), 17/3233, P.W. 98/1(29)/3243(8), G.W. 11/1(35)/3398(16), P.W. 105/1(7)/3418(2), C.W. 29/1(27)/3252(25)].

Preventive measures at Mahad

90.3 When the news of the Goregaon riot reached Mahad, the situation became tense and the Hindus and the Muslims were seen collecting in groups and indulging in rumours. S. H. Atarde, the Tahsildar of Mahad, (P.W. 104) noticed this as he moved about in the town in the evening between Pimpalpar Naka and Gandhari Naka. The S.D.P.O., Mahad, before he left for Goregaon had left instructions at the Mahad Taluka Police Station to maintain proper bandobast. On seeing the situation, Atarde thought it appropriate to verify whether the Sub-Inspector in charge of the police station was aware of the situation and if so, whether he had taken precautionary measures such as the posting of policemen at appropriate places. He therefore went to the police station at about 9-30 p.m. and inquired about the sub-inspector. The head constable present there told him that the sub-inspector was on casual leave and the Jamadar in charge was at his residence. On further inquiries he learnt that proper bandobast was made. Even then the next morning he sent a letter to the police station to take strict precautionary measures so that the incidents in Goregaon would not have a repercussion in Mahad. C.P.I., Saluke had gone to Bhiwandi on May 6, 1970 and returned to Mahad in the evening. On his return he came to learn about the riots at Goregaon. He inquired about the instructions left by the S.D.P.O. and accordingly he posted police pickets at likely trouble spots and intensified patrolling [P.W. 104/1(2)/3378(1-2), P. W. 105/1(7)/3418(2)].

The effect of the Goregaon riot in Mahad

90.4 Dr. Mrs. Kazi and Ebrahim Chichkar have stated that the riot at Goregaon created great tension in Mahad and the situation became very explosive. Chichkar has further stated that the Muslims, being in a minority in Mahad, became panicky and frightened and felt that there was no safety in Mahad and that violence might erupt at any time [M.M.W. 1/1(28)/3317(14-5), M.M.W. 3/1(14)/3385(6), 9/3389].

90.5 In none of the affidavits filed on behalf of the District Police Officers is there any indication that the Goregaon riot created any tension in Mahad. S.P., Khan has deposed that he did not apprehend that because of the Goregaon riot trouble would break out in Mahad (P.W. 97/48/3310). Tahsildar Atarde has, however, stated in his affidavit that when he moved about in the evening between Pimpalpar

Naka and Gandhari Naka he saw Hindus and Muslims collecting in groups and indulging in rumours, and that this made him go to the police station to verify whether proper precautionary measures had been taken and to write a letter in that behalf to the police station the next morning [P.W. 104/1(2)/3378(1-2)]. In the affidavits of several Muslims, who have not been examined as witnesses, namely, in the affidavits of Ibrahim Hasan Miya Pansare (affidavit No. 6), the joint affidavit of Hasan Shahbuddin Pansare and Ahmedsaheb Abul Kadir Dingankar (affidavit No. 7), Hasan Mia Gulam Mohiuddin Pansare (affidavit No. 316) and Shaikh Babu Abdul Kadar Maple *alias* Babu Mopla (affidavit No. 317), it is stated that the Goregaon riot created great tension in Mahad and the situation became very explosive and could break into violence any time. In the preceding six months Mahad had become a communal trouble spot and it stands to reason that the occurrence of a riot, in which the Hindus were ranged on one side and the Muslims on the other, in a place situate in such close proximity to it, must cause communal tension in Mahad.

90.6 Most of the Muslim deponents mentioned above as also Dr. Mrs. Kazi, Chichkar and Savant [C.W. 29/1(27)/3252(25)] have charged that in spite of this tension, proper bandobast was not kept and the police force at the Mahad Town Police Station was not replenished. This allegation is factually true, but it is not possible to accept the suggestion of indifference and negligence underlying it. The situation has to be viewed not only from the point of view of Mahad but from all angles, a riot which had the appearance of a communal riot had taken place at Goregaon. It was difficult to envisage in advance the length of its duration and the magnitude of its extent. It is true that because of the riot at Goregaon the police strength of the Mahad Town Police Station was reduced as the S.D. P.O., Mahad, had left for Goregaon with two sub-inspectors, four police head constables and twelve constables. Before proceeding to Goregaon, S.P., Khan, who was then at Panvel, had instructed his Home Police Inspector to inform all officers in charge of the police stations in the District to have police patrols in mixed locality and at known trouble spots within their areas and accordingly a telephonic alert had been sent to all police stations by the Home Police Inspector, Alibag. The next day was Shiv Jayanti and the largest Shiv Jayanti procession in Kolaba District used to be taken out at Panvel. Khan was, therefore, in Panvel on May 6, 1970 for the Shiv Jayanti bandobast. One must bear in mind that the S.P. could not possibly have so much force at his disposal as to reinforce the police station of every sensitive place in the District whenever trouble breaks out at one place. By this time the social boycott of the Muslims was spreading and several other places in Mangaon Taluka and other Talukas had become communally sensitive spots. As Khan has said while deposing about the bandobast made by him on learning about the Bhiwandi disturbances, if he had been able, he would have sent reinforcements to at least six police stations including Mahad, but he did not have so much

force at his disposal (P.W. 97/15/3232). Khan had himself personally gone to Goregaon to take charge of the situation there. Two platoons of S.R.P. men had also been sent for and were in Goregaon from the early hours of May 7, 1970. The distance between Goregaon and Mahad is only about 13 miles and at the first news of any trouble in Mahad these officers or some of them with a part of the police personnel which had gathered in Goregaon could have rushed upto Mahad.

90.7 The Goregaon riot, though it aggravated the communal tension in Mahad, did not lead to any incident and it was not the immediate and proximate cause of the Mahad disturbances.

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CHAPTER 91
THE SHIV JAYANTI CELEBRATIONS

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- 91.2 The 1970 Hindu festivals in Mahad.
- 91.3 Shiv Jayanti celebrations in Mahad.

CHAPTER 91

THE SHIV JAYANTI CELEBRATIONS

Police bandobast in the District

91.1 The largest Shiv Jayanti procession in Kolaba District used to be taken out in Panvel. Panvel being near Thana District, the Shiv Jayanti gave rise to considerable interest and enthusiasm amongst the people of Panvel. Panvel was also the first place in Kolaba District in which a Shiv Sena Branch was opened (P.W. 97/14/3232). For the 1970 Shiv Jayanti which fell on May 7, 1970, a large procession was to be taken out at Panvel. As S.P., Khan considered Panvel a trouble spot, he deployed to Panvel one out of the two S.R.P. platoons which had arrived at Goregaon. He also sent back at about 4 a.m. on May 7, 1970 the officers and men who had come with him from Panvel and directed the S.D.P.O., Mahad, along with the officers and men who had come with him from Mahad, to continue to remain with him at Goregaon for patrolling and bandobast as there was some information that the Muslims from surrounding areas were likely to attack the Hindus at Goregaon. Police bandobast was also maintained at Mahad, Kokban and other sensitive places. Shiv Jayanti passed off peacefully and no untoward incident was reported from any place in the District. C.P.I., Saluke was in charge of the bandobast at Mahad [P.W. 97/1(16)/3212(9-10), G.W. 11/1(36)/3398(16), P.W. 105/1(7)/3418(2)].

The 1970 Hindu festivals in Mahad

91.2 After Bal Thackeray's Ratnagiri tour and the Shiv Sena public meeting held by it in Mahad on February 22, 1970, the Shiv Sena sought further prominence and publicity by seeking to monopolize the celebration of all Hindu festivals in Mahad in March, April and May 1970. Dr. Mrs. Qamar Kazi has deposed (M.M.W. 1/10/3323-4):

“To my mind what was objectionable about the Hindu festivals which took place in the months of March, April and May 1970 was the fact that the Shiv Sena flags were carried and most of the persons who took part were dressed in Bhagwa clothes which are typical of the Shiv Sena, thus seeking to make out that these Hindu festivals were the monopoly of the Shiv Sena and all Hindus in Mahad belonged to the Shiv Sena.”

In her affidavit she has commented on the fact that the celebration of Hindu festivals in these months revealed that the spirit of the Shiv Sena organization had pervaded the other parties in Mahad. She has stated that in the Holi Festival 'lezim' was played all along, Shiv

Sena flags were carried and were fluttering all over the town and the Holi wooden pillar at the Salwad Naka, which remains till the next year's Holi, had for the first time a Shiv Sena flag fluttering on its top. Again in the Rangpanchmi celebrations on March 28, 1970, 'lezim' was played with the participants carrying Shiv Sena flags and dressed in Bhagwa clothes. The bullock-cart in this festival, usually decorated with the colour of the Mahad Panch on two or three big vessels, was this time additionally decorated with three Shiv Sena flags, one in the centre and two on each side. For the Gudhi Padwa celebrations, which took place on April 7, 1970, for the first time, the Gudhis were also decorated at several places with the Shiv Sena flags [M.M.W. 1/1(26)/3317(13)].

Shiv Jayanti celebrations in Mahad

91.3 Savant has deposed that prior to 1970 no Shiv Jayanti procession used to be taken out in Mahad though about twenty years ago he had himself taken out such a procession. He has further deposed that prior to 1970 Shiv Jayanti was not being celebrated in Mahad but it used to be celebrated at Raigad, the capital of Shivaji, at a distance of about 15 miles from Mahad (C.W. 29/27/3264). For the May 1970 Shiv Jayanti, the celebrations were organized by the Mahad Branch of the Shiv Sena.

91.4 The 1970 Shiv Jayanti celebrations in Mahad commenced at about 4 p.m. with a procession of about 100 to 125 persons, many of whom were young boys dressed in Bhagwa clothes and carrying Bhagwa flags. The procession started from the Jakmata Temple behind the Mahad Town Police Station and terminated at Dandekar Chowk where a public meeting was held which was presided over by Surba Tipnis [P.W. 97/50/3310, G.W. 11/1(36)/3398(16), M.M.W. 1/1(26)/3317(13-4)]. Dr. Mrs. Kazi has alleged that she found this procession suspicious because though it consisted of only young boys, it was a quiet procession and no procession of young boys would usually be quiet (M.M.W. 1/11/3324). Though one may agree with her about the vociferous tendency of young boys, it is difficult to agree with her that there was something suspicious about this procession for the reason alleged by her. Her allegation in this behalf appears to be too farfetched. In his affidavit Savant has thus commented upon the strange spectacle of a P.S.P. leader presiding over a function organized by the Shiv Sena [C.W. 29/1(28)/3252(25-6)]:

"The next day i.e. 7th May 1970 was the Shiv Jayanti day. The Shiv Sena decided to celebrate the Shiv Jayanti on behalf of its own party only. The public meeting called for the purpose, however, was presided over by the P.S.P. leader Shri S.G. *alias* Surba Tipnis who had to justify his action by saying "I am not a Shiv Sainik but still I have presided over this meeting because the Shiv Sena has done some good things also". In the face of the open hostility between the top leadership of the Shiv Sena and the P.S.P. this commendatory reference to Shiv Sena from a state-level leader of

the P.S.P. sounds jarring to an outsider's ears, but the Mahad public find nothing odd in it for they knew that so far as Mahad is concerned the Shiv Sena, the P.S.P. and the Jan Sangh are one and the same. Some Jan Sangh leaders in Mahad also spoke at this Shiv Sena meeting."

91.5 Chichkar also has stated in his affidavit that Tipnis in his speech said that though he was not a Shiv Sainik, he liked the Shiv Sena because it had done several things, and has commented that this showed how the P.S.P. in Mahad had a strange affinity for the Shiv Sena in spite of the fact that its State leaders were decrying the Shiv Sena in Bombay and Poona [C.W. 30/1(19)/3270(9)]. The evidence of Tipnis on this point is as unsatisfactory as on other points. He has deposed (C.W. 47/25/3975):

"Shiv Jayanti is being celebrated in Mahad since a number of years since the days of Lokmanya Tilak. I cannot say whether there used to be any Shiv Jayanti processions prior to 1970. I presided at the Shiv Jayanti meeting held in Mahad on May 7, 1970. Some young boys from all parties had come to me to ask me to preside." One cannot be so naive as to believe that a man in public life and so active in Mahad politics and affairs for the last so many years did not know whether there used to be a Shiv Jayanti procession prior to 1970. In his affidavit and in his evidence his endeavour has been to make out that these celebrations were not organized by the Shiv Sena alone, while the S.P. as also Savant and Chichkar have testified that the 1970 Shiv Jayanti in Mahad was celebrated by Shiv Sena. I accept their evidence in preference to that of Tipnis who has not proved a reliable or satisfactory witness.

91.6 There is no police or intelligence report on this procession or public meeting. This is somewhat surprising. Mahad had in the preceding five months become a communally sensitive spot. The possibility of this Shiv Jayanti procession and public meeting giving rise to some incident was, therefore, present. In these circumstances, not making a report appears to be a default on the part of the local police authorities.

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CHAPTER 92
THE SETTING FOR THE DISTURBANCES

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CHAPTER 92

THE SETTING FOR THE DISTURBANCES

The news of the Bhiwandi disturbances

92.1 The news of the outbreak of the communal disturbances at Bhiwandi came on the radio. The 8th May 1970 issues of the newspapers carried reports of the said disturbances. The English and Marathi dailies and some Urdu dailies (Exs. G 336, G 340, G 345, G 350, G 354, G 359, G 365, G 370, G 375 and G 385) mentioned the cause of the said disturbances as an attack on the Shiv Jayanti procession — a statement likely to excite feelings of resentment against the Muslims amongst the Hindus, particularly the Hindus of Maharashtra, and fill with elation the communal section amongst the Muslims. Savant has stated in his affidavit [C.W. 29/1(29)/3252(26)]:

“When communal bitterness was thus mounting in Mahad and the Hindus and Muslims — at any rate the rabid section from both the communities — were closing up their ranks under extremist leadership the news of the devastating communal riots at Bhiwandi sparked by a wanton pre-planned attack on the Shiv Jayanti procession leaked to Mahad in the evening of 7th May 1970, and was confirmed by the morning papers which reached Mahad by 10 a.m. on 8th May 1970. The earlier news indicated that the Hindus were the main victims. This exasperated the Hindus and elated the rabid section of the Muslims in Mahad.”

S.P., Khan has also deposed that the news of the Bhiwandi disturbances reached Mahad on the morning of May 8, 1970 (P.W. 97/54/3312).

The wireless alerts

92.2 At 10-30 p.m. on May 7, 1970 the D.I.G. (B.R.), who was then camping at Bhiwandi, sent a crash wireless message to the Ss.P. of Kolaba, Nasik, Dhulia and Jalgaon Districts (Ex. P 1110). The said message stated:

“Shiv Jayanti procession stoned at Bhiwandi resulting in communal riots. Alert your staff and take necessary precautions for likely repercussion.”

The said crash message was received at Alibag at 11-12 p.m. the same night. At 2-45 a.m. on May 8, 1970 the I.G.P. sent a crash wireless message to the S.P., Kolaba (Ex. P 1109). The I.G.P.'s said wireless message stated:

“Communal flare up in Bhiwandi. Alert Mahad and Panvel Police Stations to remain on guard.”

The I.G.P.'s said wireless message was received by D. S. Salgaonkar, Home Inspector, Kolaba District, at 3-15 a.m. on May 8, 1970.

Preventive measures

92.3 On account of the Goregaon riot S.P., Khan was camping at Goregaon on the night of May 7, 1970. Because he found the telephone line between Goregaon and Alibag not working, he returned to Alibag in the morning of May 8, 1970. He reached Alibag at about 9 a.m. and came to learn about the I.G.P.'s said wireless message. He immediately gave instructions to the Home Inspector to alert all police stations. Before Khan's arrival at Alibag, on receiving the I.G.P.'s said wireless message the Home Inspector had already booked trunk-calls to Panvel and Mahad at 4-20 a.m. on May 8, 1970 and H.C., A. D. Yadav, who was that night the Police Station Officer at the Mahad Town Police Station received the said call at 7-45 a.m. (Exs. P 1106 and P 1107). The said trunk-call required the Mahad Town Police Station to inform the P.S.I. and the S.D.P.O. of the breaking out of the communal disturbances at Bhiwandi and Thana and to keep watch within their respective jurisdictions [P.W. 97/1/(16)/3212(10), 25/3236].

The police bandobast at Mahad

92.4 Though Mahad was specifically mentioned in the I.G.P.'s said crash wireless message (Ex. P 1109) and though a part of the police force had been diverted to Goregaon, no reinforcements were sent to Mahad. Khan has stated that when he learnt about the Bhiwandi disturbances, if he had been able, he would have sent reinforcements to at least six police stations, including Mahad, but he did not have so much force at his disposal (P.W. 97/15/3232). The S.D.P.O., Mahad, Dy. S.P., Khan, continued to camp at Goregaon, as a precautionary measure against the possibility of the riot flaring up there again by reason of the news of the Bhiwandi disturbances.

92.5 On that day there was one Police Sub-Inspector, 5 head constables and 21 police constables available for duty at Mahad. A note on the sanctioned and available strength, reinforcements and deployment of police personnel at Mahad has been filed before the Commission and is Exhibit P 1100. The sanctioned strength of the Mahad Town Police Station at that time was 2 sub-inspectors, 9 unarmed and 6 armed head constables and 24 unarmed and 24 armed police constables. The actual strength was, however, short of the sanctioned strength by one unarmed head constable, 3 unarmed and 2 armed constables, though there was one armed head constable in excess of the sanctioned strength. Two armed head constables and 6 armed constables and a gas squad, consisting of one head constable and 4 constables, were received as reinforcements from the Headquarters. Out of them, the gas squad, one sub-inspector, one unarmed and 2 armed head constables and 8 armed constables were sent to Goregaon. On May 8, 1970 the men who were sent to Goregaon

continued to remain there with the S.D.P.O. On that day one Sub-Inspector, 2 armed head constables and 3 armed constables were absent from duty, being either sick or on leave. Two unarmed head constables and one unarmed police constable were posted for duty out of Mahad and one unarmed head constable and 2 unarmed constables were posted at Birwadi Out-post and Dagaon Sub-Outpost. Thus, on May 8, 1970, taking into account those who were absent, sent to Goregaon and posted for duty out of town, the police personnel available at Mahad that day consisted of 5 head constables and 21 police constables, of whom 3 head constables and 7 constables were armed.

92.6 The available strength of the Mahad Town Police Station was thus obviously inadequate to cope with a riot of any magnitude. Fortunately for Mahad, C.P.I., Saluke (P.W.105), who had gone to Birwadi on May 6, 1970, had returned to Mahad that very evening and was in Mahad on May 8, 1970.

92.7 After the receipt of the telephone message from Alibag about the Bhiwandi disturbances, one head constable and 2 constables were posted at Salwad Naka, one head constable and 4 constables at Shah Bahiri Dargah, 2 constables at the S.T. stand, one at Lokhandi Bridge and one at Old Post Office Naka in addition to the regular picket of two constables at the disputed structure.

The situation at Mahad

92.8 Tahsildar Attarde has stated in his affidavit that as a result of the news of the Bhiwandi disturbances which appeared in the press, "the situation in Mahad was charged with some tension" [P.W. 104/1(3)/3378(2)]. Both Ebrahim Chichkar and Dr. Mrs. Kazi have referred to the fact that on May 8, 1970, the news of the communal disturbances at Bhiwandi spread in Mahad and Ebrahim Chichkar has stated that "both the Hindus and Muslims of Mahad became severely agitated over it" [C.W. 30/1(20)/3270(9), M.M.W. 1/1(31)/3317(15)].

The police picket at the disputed structure

92.9 It is alleged by the Muslim parties that instead of removing the Shiv Sena flag which was hoisted on the disputed structure, a police picket of 4 constables was kept at the disputed structure as from January 18, 1970 (that is, the day after Bal Thackeray hoisted the flag) to guard the flag hoisted there by Bal Thackeray. This allegation was also made by Dr. Mrs. Kazi in a letter dated March 7, 1970 (Ex. P. 1098) addressed to the Chief Minister, whereby she requested for the removal of the said flag.

92.10 The case of the Executive Magistrates and the District Police Officers as deposed to by S.P., Khan is that from January 18, 1970 onwards, a twenty-four-hour police patrol consisting of one head constable and 3 constables was kept at Bunder Naka, its duty being to patrol from Bunder Naka upto the disputed structure and to see that no disturbance took place at or near the disputed property and

not to allow any person to remove the flag or to hoist another flag, and that it was from April 16, 1970 that an armed guard of one head constable and 4 constables was assigned for guard duty at the disputed structure, April 16, 1970 being the date on which the Interim Receiver appointed in the said section 145, Cr. P.C. proceedings took possession of the disputed property (P.W. 97/13/3232, P.W. 101/19-20/3354-3355).

92.11 There is some confusion about whether the police party posted at Bunder Naka as from January 18, 1970 was a police patrol or a fixed-point duty picket. The Duty Registers of the Mahad Town Police Station show that one head constable and 3 constables were given fixed-point duty at Bunder Naka from January 18, 1970 onwards. P.S.I., Vichare, has, however, deposed :

“ This fixed-point duty consisted of patrolling from Bunder Naka to the disputed place.”

I, however, see no reason to disbelieve the evidence of S.P., Khan on this point. In fact, Dr. Mrs. Kazi has herself in cross-examination accepted this position. She has deposed (M.M.W. 1/30/3329-30):

“ ... after April 2, 1970, on which date the order under section 145, Cr. P.C. was made and after the police guard was posted there, on two consecutive days Savant went up to the disputed structure. The first of these occasions was a Saturday evening and the next occasion was the morning of the Sunday immediately following. On the first occasion he was alone, while on the second occasion he was accompanied by Hasanmiya Gulam Mohiuddin Pansare (the deponent of affidavit No. 316). On the evening of that very Sunday I was going with my little son, then aged 3 years, for an outing to the river bank by the path which leads to the river by the side of the mound, but an S.R.P. man stopped me from going by that path. This is the path used by hundreds of persons to go to the river bank. I asked the S.R.P. man why he was stopping me and to show me the area he was required to guard and if he did not know it, to call the seniormost out of the four guards there. He thereupon did not say anything but allowed us to go. After I returned home I received a telephone call from Savant. He told me that it was the talk of the town that I had a tussle with the S.R.P. man. I told him what had actually happened.”

The above answer clearly implies that the police guard was posted at the disputed structure after the order appointing the interim receiver was made in the proceedings under section 145, Cr. P.C. According to Dr. Baburao Mehta also, the police picket at the disputed structure was kept from April 1970 (C.W. 46/12/3961).

92.12 In the light of the above evidence, I hold that prior to the interim receiver taking possession of the disputed property, there was only a police patrol party which patrolled from Bunder Naka upto the disputed property and that after the interim receiver took possession of the disputed property, a police guard was also posted at the disputed structure.

Whether the flag on the disputed structure was a Shiv Sena flag ?

92.13 Though several of the witnesses and many of the reports refer to the flag hoisted by Bal Thackeray on the disputed structure as also the flag re-hoisted on the night of January 20, 1970 as a saffron-coloured flag or a Bhagwa flag, D.M., Savanur in the note on the situation in Mahad, prepared by him in consultation with the S.P., Kolaba, and submitted to the Home Secretary along with his letter dated February 4, 1970 (Ex. P 1127) has stated that the flag which was hoisted on the disputed structure on January 17, 1970 was a Shiv Sena flag. It also appears from the said note that the flag re-hoisted by Anna Pawar on the night of January 20, 1970 was also a Shiv Sena flag; a fact also clear from the evidence of Constable Dattatraya Dagadu Shelar (P.W. 99/7/3286) and the description of the flag given in the panchnama dated May 9, 1970 (Ex. P 1119) of the taking charge of the said flag by the Police and the judgment of the Judicial Magistrate, First Class, Mahad (Ex. P 1112) in Criminal Case No. 426 of 1970 against the two Muslims who were prosecuted for trespassing upon the disputed property and using criminal force against Constable Shelar while removing the said flag and attempting to take it away.

92.14 Since the Shiv Sena flag is also a saffron-coloured flag, it appears that there is often a confusion in the minds of the people between the Shiv Sena flag and the Bhagwa flag. The three witnesses who were questioned about this difference could not give any answer save to say that they did not know what the difference was. These witnesses were P.S.I., Vichare (P.W. 102/21/3356), Dr. Baburao Mehta (C.W. 46/19/3964) and Dr. Mrs. Kazi (M.M.W. 1/10/3323). The Bhagwa flag is associated since times immemorial with Hindu religious festivals. It was also the flag adopted by Shivaji and was the flag of the Maratha Empire. The Shiv Sena has appropriated this flag as its own party flag (G.W. 1/52/46). Bhausaheb Dhamankar (C.W. 3) has stated that the difference between the flag of Shivaji and the ordinary flag is that Shivaji's flag, which was known as Jaripataka, had a Jari border, the other difference pointed out by him being that while the outer edge of the Bhagwa flag and the Shiv Sena flag, is the apex of a triangle, the outer edge of the Jaripataka is the triangle with the apex towards the flag staff (C.W. 2/34/1721). The Shiv Sena flag, as described in the note on the Shiv Sena and its activities filed by I.G.P., Rajadhyaksha (Ex. G 99), is a plain saffron-coloured two-cornered triangular flag. In addition to the saffron-coloured flag, the Shiv Sainiks often dress in saffron-coloured clothes.

92.15 The object of the Shiv Sena in adopting this flag and dress, with all the religious significance and symbolism attaching to them, is obvious. It is to lend an air of religious sanctity to the programmes and policies of the Shiv Sena and to make it appear to the people that the Shiv Sena is the champion of the Hindus and Hinduism against all anti-Hindu elements. It is the deliberate importing of a religious element into politics which, in the context of the present

day politics, can only mean a communal element, and to create around its Chief, Bal Thackeray, the aura of a modern-day Shivaji. In several speeches, reports of which have been produced before the Commission, the Shiv Sena leaders have time and again emphasized the saffron colour of their flag and called upon all Hindus to unite under it. Some examples of such speeches are the speech of Bal Thackeray at the public meeting held on October 12, 1969 at the Durgadi Fort, Kalyan (Ex. P 535), the speech of Datta Salvi at the public meeting held on January 17, 1970 at Mahad (Ex. G 258), the speeches of Manohar Joshi and Bal Thackeray at the meeting held on February 17, 1970 at Khed (Ex. P 1114), the speech of Datta Salvi at the meeting held at Chiplun on February 16, 1970 (Ex. P 1115) and the speeches made at the public meeting held at Mahad on February 22, 1970 (Ex. P 1084).

Why was the flag not removed by the Police ?

92.16 On January 17, 1970 Bal Thackeray hoisted a flag on the disputed structure by committing an act of trespass. Similarly, on the night of January 20, 1970 Anna Pawar hoisted a flag on the disputed structure, in place of the flag which was removed, also by committing an act of trespass. The question which arises is, why should a flag—whether a Shiv Sena flag or a Bhagwa flag having religious significance (for that would make no difference)—have been allowed to remain on the disputed structure ?

92.17 In cross-examination S.P., Khan has given his reasons for not removing the flag (P.W. 97/7/3225-6). He has deposed that on the evening of January 17, 1970, there was no time to have the flag removed, as police bandobast had to be maintained in the town for the Shiv Sena procession and public meeting. It is obvious that had the flag hoisted by Bal Thackeray been removed that very evening, a riot would have taken place immediately, and very probably, the Muslims would have been charged with having removed it and the riot, which would have taken place, would have been a communal riot. Khan has also deposed:

“I could not spare enough time to remove the flag and to look after what might happen thereafter.”

He has further stated that the flag was not removed the next day because of the said writing (Ex. P 1069) given by the local Muslim leaders, including the Mutavali of the Muslim Jamaat of Mahad and the Mutavali of the disputed property, to the effect that no action should be taken against Bal Thackeray and the other Shiv Sena leaders in order to maintain public peace and not to allow the relations between the Hindus and the Muslims to become strained. He has further deposed:

“We could have removed the flag and seized it only as ‘muddemal’ in a criminal case, but in view of this writing given by the local Muslim leaders (Exhibit P 1069) we did not register an offence and therefore could not do so.”

In spite of the said writing, the Police, however, did register an offence against Bal Thackeray and the other Shiv Sena leaders on January 21, 1970; but on that day, the flag which was on the disputed structure was not the flag hoisted by Bal Thackeray, but the flag hoisted in its place by Anna Pawar.

92.18 By her letter dated March 7, 1970 (Ex. P 1098) addressed to the Chief Minister, Dr. Mrs. Kazi, after pointing out that the disputed property had been handed over to the Government, stated:

“The Shiv Sena flag hoisted by Shri Bal Thackeray on the 17th of January, 1970, by trespassing on the land concerned (and against whom no action whatsoever was taken by the authorities concerned) is still fluttering there till today and is guarded day and night by four policemen Sir, I stay right in front of the said place and it has become unbearable for me to see an illegal flag fluttering over there.

“May I request your Honour to kindly see that the flag is immediately removed? If the Government has accepted the offer, the place belongs to the Government. Till accepted, or if not accepted, it is in the possession of the Muslim Jamaat of Mahad. There is no logical or legal grounds, as to why the Shiv Sena flag be kept hoisted there and that too fully guarded.

“Hoping for your just and immediate action and reply.”

92.19 The said letter was forwarded on March 31, 1970 by the Home Department (Special) to the D.M., Kolaba for “immediate remarks” (Ex. P 1145). By his letter dated April 3, 1970 (Ex. P 1146), the Under-Secretary, Home Department (Special) requested D.M., Savanur to intimate the final result of the proceedings under section 145, Cr.P.C. The said letter further stated:

“It is alleged that a Shiv Sena flag is still flying on the said premises. Please intimate the correct position in this behalf, immediately.”

By his letter dated April 4, 1970 (Ex. P 1147), the Addl. D.M., Kolaba, forwarded to S.P., Khan the copy of Dr. Mrs. Kazi's said letter with a request to submit his remarks thereon within two days. The said letter was received in the office of the S.P. on April 9, 1970, as is shown by the endorsement on the said letter. By his letter dated April 8, 1970, the Addl. D.M., Kolaba, called upon the S.D.M., Mahad, to intimate the final result of the said proceedings under section 145, Cr. P.C. by return of post as the Government was anxious to know about it, and also to state the correct position about the Shiv Sena flag on the disputed structure. By his report dated April 18, 1970 (Ex. P 1149), S.P., Khan submitted his parawise comments on Dr. Mrs. Kazi's said letter. In the said report he pointed out that the disputed property had been handed over by the Muslim Jamaat to the Government, “but nothing has been authoritatively learnt by Police Department, accordingly from the Government.” The said report further stated:

“The flag which is fluttering on the disputed place is of Shiv Sena. I am of opinion that it should be removed without any delay even though any tension is created by Shiv Sena workers in Mahad.

"If the proposal as stated by Dr. Mrs. Kazi is accepted by the Government the (*sic*) comes in possession of Revenue Department and it should remove the flag at any time. Necessary police bandobast as requested would be given if demanded by the concerned."

92.20 On April 21, 1970, the S.D.M., Mahad, rang up the Taluka Magistrate and asked him to inquire whether the flag had been removed or not (Ex. P 1150). By his letter dated April 28, 1970 (Ex. P 1151), the Addl D.M., Kolaba, sent a reminder to the S.D.M., Mahad. By the letter dated April 30, 1970 (Ex. P 1152), the D.M., Kolaba, was asked by the Home Department (Special) to expedite the submission of his remarks. By his letter dated May 8, 1970 (Ex. P 1163) addressed to the S.D.M., Mahad, Taluka Executive Magistrate Attarde (P.W. 104), stated that it had been suggested to the Circle Inspector Palkar, who as receiver had taken possession of the disputed property, to remove the flag, but Palkar had expressed his inability to do so for two reasons, the first reason given by Palkar being that as he had taken possession in the capacity of a receiver he could not make any change in the situation of the property on his own authority and that an order in clear terms should be issued to him in that behalf, and the second reason given by Palkar being:

"The receiver is of the opinion that if he removes the flag without their being clear orders in writing, those persons who have regard for the said flag will make a capital out of it and would create unrest and that, therefore, it is necessary that he should get sufficient police protection at the time of removing the flag and the Police are not prepared to give the help without the order as aforesaid."

In the concluding paragraph of his said letter Attarde stated:

"After going through all the papers and documents, it appears to me that the aforesaid land belongs to the Government and there is nothing wrong in giving orders in clear terms to the receiver for removing the flag at that place."

The statement of Circle Inspector Palkar set out in Attarde's said letter that the Police were not prepared to give the help without an order, does not appear to be correct (unless it referred only to the local police), because in his said report dated April 18, 1970 (Ex. P 1149), Khan, after expressing his opinion that the flag should be removed by the Revenue Department, had stated, "Necessary police bandobast as requested would be given if demanded by the concerned." By the letter dated May 23, 1970 (Ex. P 1154), another reminder was sent by the Home Department (Special) to the D.M., Kolaba. The Addl. D.M. finally made his report to the Home Department (Special) by his letter dated July 25, 1970 (Ex. P 1155). In the said report he stated that the S.D.M. had passed a preliminary order and taken the disputed property in his possession through the Circle Inspector, Mahad, on April 16, 1970. He further stated:

"On 8th May 1970 two Mohamedans removed the Shiv Sena flag after assaulting two police constables posted at the disputed place for bandobast duties. They were arrested and a prosecution under

section 447, 353, 323 and 34 has been launched against them in the court of law.”

The statement contained in the paragraph quoted above was not correct because, according to the Police, the flag removed by the two Muslim accused was retrieved by the constables on duty and replaced on the disputed structure. What actually happened to the flag was that in the case registered against these two Muslim accused the Police took charge of the flag on May 9, 1970 as part of the “muddemal” in that case under a panchnama dated May 9, 1970 (Ex. P 1119). By his judgment and order dated January 30, 1971 in Criminal Case No. 426 of 1970 (Ex. P 1112) under section 517, Cr. P.C. the Judicial Magistrate, First Class, Mahad, who tried the said two Muslims, ordered under section 517, Cr. P.C. that the said flag be destroyed.

92.21 It is unfortunate that at least after the interim receiver took possession of the disputed property, prompt steps were not taken to remove the flag from the disputed structure. S.P., Khan has deposed that after he had submitted his said report dated April 18, 1970 (Ex. P 1149) he did not receive any instructions from any authority about the removal of the flag (P.W. 97/16/3233). The presence of this flag on the disputed structure was a sore point with some of the Muslims. It provided material for articles and editorials in the “Maharashtra Muslim” to cause further resentment amongst the Muslims and it gave scope for allegations to be made that the Police were guarding the Shiv Sena flag. Had this flag been removed, very probably no disturbances would have taken place at Mahad on May 8, 1970.

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CHAPTER 93

THE OUTBREAK OF THE DISTURBANCES AT MAHAD

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CHAPTER 93

THE OUTBREAK OF THE DISTURBANCES AT MAHAD

The rival cases

93.1 It is the case of the Executive Magistrates and the District Police Officers and of the Hindu parties that the proximate or immediate cause of the disturbances at Mahad was the removal of the flag from the disputed structure by two Muslims in the afternoon of May 8, 1970, after assaulting one of the police constables on duty there. It is the case of the Muslim parties that this was a false rumour deliberately and mischievously spread in the town by the Shiv Sena and Jan Sangh workers in order to provoke the Hindus against the Muslims.

The police evidence about the removal of the flag

93.2 Two Muslims, namely, Ahmed Shahabuddin Pansare and Abdul Samad Gani Pansare, were prosecuted for assaulting the police constable on duty at the disputed structure, namely, Dattatraya Dagdu Shelar (P.W. 99), and removing the flag which had been hoisted there by Anna Pawar on the night of January 20, 1970, and attempting to take it away. They were both charged under sections 447 and 353 read with section 34, I.P.C. with having committed criminal trespass by entering upon the disputed property and with using criminal force against a public servant. They were tried before Mr. S. D. Pandit, Judicial Magistrate, First Class, Mahad, the case against them being Criminal Case No. 426 of 1970. By his judgement and order dated January 30, 1971 (Ex. P 1112) the Judicial Magistrate disbelieved the prosecution evidence and acquitted both the accused and directed under section 517, Cr. P.C. that the flag on the disputed structure which had been taken charge of by the Police should be destroyed.

93.3 The only direct evidence before the Commission in respect of this alleged incident is that of the two police constables who were on fixed-point duty at the disputed structure on that day, namely, A.P.Cs., Dattatraya Dagadu Shelar, Buckle No. 259 (P.W. 99), and Tukaram Anaji Davrung, Buckle No. 519 (P.W. 100). The Judicial Magistrate has disbelieved both these constables. Their evidence before the Commission is so riddled with contradictions and their demeanour in the witness-box so hesitant and prevaricating that their evidence before the Commission must suffer the same fate.

93.4 This alleged incident is narrated in the affidavits of S.P., Khan [P.W. 97/1(18)/3212(10)] and D.M., Savanur [P.W. 98/1(31)/3243(9)]. Neither of them was present in Mahad on that day, and their knowledge of the said alleged incident is based on hearsay.

Strangely enough, in the affidavits filed originally before the Commission on behalf of the Executive Magistrates and the District Police Officers there was no affidavit of either of these two constables who, were their story true, would be the eye-witnesses of the said alleged incident and the most important witnesses in respect thereof. During the course of the hearings relating to the Mahad disturbances the Commission, therefore, directed that the affidavits of these two constables should be filed and they be examined as witnesses. The affidavits of these two constables were accordingly affirmed on June 26, 1972 and taken on file.

93.5 We will first see the story as set out in the affidavit of A.P.Cs., Shelar and Davrung [P.W. 99/1(1 to 10)/3280(1-3); P.W. 100/1(1-4)/3289(1-2)]. In April 1970 they were both attached to the Kolaba District Police Headquarters and formed part of the police party consisting of two head constables and six constables which was sent from the Headquarters to Mahad for bandobast in the first week of April 1970. They were instructed by the officers of the Mahad Town Police Station not to allow anyone, whether Hindu or Muslim, to go to the disputed structure as it was in the possession of the Government and there was a dispute over it between the Hindus and the Muslims. Both of them were detailed for duty at the disputed structure from 8 a.m. to 8 p.m. on May 8, 1970. At about 1-30 p.m. or 2-00 p.m. Davrung went to the Octroi Chowki for lunch, while Shelar remained at the disputed structure. Just then two Muslims rushed up from the Muslim 'mohalla' through the lane opposite to the disputed property. Shelar told them that entry into the disputed structure was prohibited and barred their way. While on duty at Mahad, Shelar had sometimes seen these two persons going about. After the incident he came to know from the people in the Octroi Chowki that one of them was known as Amin and the other was "a person from the house of Gani". On May 11, 1970 he identified these two persons at the Mahad Town Police Station and then came to know that their names were Ahmed Shahabuddin Pansare and Abdul Samad Abdul Gani Pansare. When Shelar barred their way, Abdul Samad caught his shirt, pushed him aside and both the Muslims went inside the disputed structure. Shelar rushed after them, but in the meantime Abdul Samad removed the flag, along with the stick to which it was tied, from the crack in the eastern wall of the disputed structure in which it was fixed. A struggle for the flag took place between Shelar and the two Muslims. As Shelar was not able to hold them, he shouted out twice or thrice to the "Nakedar" (octroi clerk) that two Muslims had removed the flag and were taking it away. The two Muslims started running away from the rear towards the river. Shelar chased them, continuing meanwhile to shout. They went up to the tower of the disputed structure. Shelar managed to take the flag away from the hand of Abdul Samad. In the scuffle Abdul Samad gave Shelar a push and Shelar fell down still clutching the flag. Just then Constable Davrung and others came out of the Octroi Chowki. Davrung came up running and thereupon

Abdul Samad and Ahmed Shahabuddin ran away towards the Muslim "mohalla" abusing and threatening the constables. Shelar then telephoned from the Octroi Chowki to the Mahad Town Police Station and gave information about the incident. Thereafter the two constables replaced the flag. After some time Jamadar Sathe and C.P.I., Saluke came to the disputed property and the constable informed them about what had happened. Saluke directed Shelar to lodge a complaint at the police station. Shelar, however, could not immediately go to the police station leaving Davrung alone. Soon thereafter, trouble started in the town and, therefore, Shelar could not lodge the F.I.R. immediately but did so later that evening.

93.6 The above story set out in the affidavits of the said two constables is a coherent and consistent one, such as one would expect to find in affidavits drafted and filed in pursuance of the directions of the Commission given during the course of the hearings relating to the Mahad disturbances when much water had already flown below the bridge. The cross-examination of these two constables however, leaves nothing of the original story surviving (P.W. 99/2-9/3281-8, P.W. 100/2-11/3290-3). Shelar commenced his sorry performance in the witness-box by prevaricating about the date on which he came to Mahad for bandobast duty. At first he said that it was in the first fortnight on April 1970. Then realizing that the police case was that a fixed guard was detailed at the disputed structure from April 16, 1970, he changed his story and said that he came to Mahad on April 16, 1970. Realizing that this would be inconsistent with what he had stated in his affidavit, he changed his answer and again said that he came to Mahad in the first fortnight of April 1970. He then realized that in their affidavits both he and Davrung had stated that they had gone to Mahad in the first week of April 1970 and not in the first fortnight of April 1970, he once again changed his answer and said that what he had stated in his affidavit was correct. According to his evidence, the very next day after his arrival in Mahad he began performing the fixed-point duty at the disputed structure and when he had gone there for the first time he had inquired from the constable, whom he relieved, when this duty had commenced and the said constable had replied that it had started from January 17, 1970. He reiterated in his cross-examination that he had known the two Muslims by sight prior to May 8, 1970 and that Kamalakar Gurav, the Nakerdar at the Octroi Naka, had given their names to him as Amin Pansare and "a person from the house of Gani". He was faced with his sworn testimony before the Judicial Magistrate, namely:

"I was knowing the accused-1 as Amin Pansare and the accused-2 as the person from Gani's house. *I was knowing them like this for one month prior to the incident.*"

His answer was that what he had stated before the Judicial Magistrate was a mistake on his part. He admitted that Gurav had also given evidence in the said criminal case. It was pointed out to him that Gurav had deposed before the Magistrate that he had not had

any talk with Shelar. It may be mentioned that Kamalakar Gurav, the Nakedar, and the peon, Raghunath Yadav, are alleged to have been present in the Octroi Chowki at the time of the said alleged incident. As the judgment of the Judicial Magistrate shows, Gurav had deposed before the Magistrate that there was no talk between him and Shelar or Davrung after the said incident and that before Shelar had returned to the Naka, the peon, Raghunath Yadav, had gone away. Raghunath Yadav in his evidence before the Magistrate had deposed that as soon as the said incident was over he went away and that he did not, therefore, know anything of what had happened at the Octroi Naka thereafter.

93.7 Shelar's police statement was recorded on May 11, 1970 by P.S.I., Gadkar of the Mahad Town Police Station (P.W. 106). In the said police statement he has stated:

"At about 1-30 p.m. Police Constable Davrung went to the Municipal Naka nearby for lunch as water was available there and he was having his lunch there."

In his affidavit Shelar has stated that Davrung had gone for lunch at about 2 p.m., while Davrung in his affidavit has stated that he had gone for lunch at about 1-30 p.m. or 2 p.m. On being shown what he had stated in his police statement, Shelar deposed that Davrung had gone for lunch between 1-30 and 2-00 p.m., that in May 1970 he did not possess a wrist-watch and that it was only a year back that his brother had given him a watch. He was immediately faced with the following statement from his evidence before the Magistrate:—

"I had a watch at that time, and hence I say that it (that is, the incident) took place at 2 o'clock."

Shelar was unable to explain how he had happened to make the said statement before the Magistrate. In cross-examination, he stated that after Davrung left for lunch, he had stood outside the disputed structure to the right of it for about an hour before he saw the two accused. This would bring the time of the incident to about 3 p.m. He has further deposed that he saw the two accused coming out from the town and thought that they were going to the river bank, but they came rushing up the mound, not listening to him but pushing past him. When asked why he did not shout out to Davrung at that time, he was at first unable to give any reason. He then immediately changed his answer and said:

"I now say that when they had entered inside the disputed structure I shouted out to Davrung."

He stated that he could see the Octroi Naka from where he was standing and could see four or five persons there. He has also admitted that from the Octroi Naka one could keep a watch on the disputed structure. He said that he shouted out to the 'Nakedar' because he could see him and he did not shout out to Davrung as Davrung was taking his lunch in a corner of the Octroi Chowki.

93.8 Shelar's F.I.R. (Ex. P 1102) was lodged at 8 p.m. that night. Strange to say, he has not given the physical description of either of

the two accused in the F.I.R. and neither in his F.I.R. nor in his police statement recorded on May 11, 1970 has he mentioned that it was the "Nakedar" who informed him that the name of one of the accused was Amin and that the other accused was from "the house of Gani". He could give no explanation for this omission. He also could not explain why in his police statement he had stated:

"As I was doing duty for the last one month at Mahad at Mahikavati, and Salwad Naka, I had frequently seen those two persons who removed the flag, but I do not know their names."

93.9 Shelar has deposed that on May 11, 1970 these two accused were brought to the Mahad Town Police Station by people from their own "mohalla" and were surrendered at the police station and were thereupon put under arrest and that they were also accused in one of the riot cases, namely, Sessions Case No. 12 of 1971 filed in pursuance of the F.I.R. in C.R. No. 56 of 1970 (Ex. P 1104). According to his testimony, when C.P.I., Saluke came to the spot he asked Shelar not to leave his spot because at that time arson had started in Mahad. Saluke has, however, deposed that arson started after he returned to the police station from the disputed structure. Saluke has given evidence in a straightforward manner and I accept his evidence. Shelar was faced with the reason given by him in his affidavit for not going to the police station immediately and lodging a complaint as directed by Circle Inspector Saluke, namely:

"I could not however, immediately go to the police station leaving Davrung alone. Soon after this, trouble started in the town and, therefore, I lodged my complaint later in the evening that day."

He, then said that what he had stated in his affidavit was true and not what he had stated in the witness-box. He sought to explain away this contradiction by saying that he was frightened while giving evidence before the Commission. He, however, admitted that he was not frightened when he gave evidence before the Magistrate. He was thereupon immediately faced with what he had deposed before the Magistrate, namely:

"After my telephone, the Police from the police station came there. Then the Police had enquired with me about the incident. Inspector Salunkhe and Police Jamadar Sathe had enquired with me about the incident. By that time, there were arsons in the Mahad town and hence they went to that site and they had told us not to leave the place and hence my complaint was taken at about 8-30 p.m. on that day."

While giving evidence before the Commission Shelar only knew the name Amin Pansare. He did not know the name of Amin's father nor could he state the name of the other accused. He was unable to explain how he had happened to mention the full names of both the accused in his affidavit. He deposed that the man from "the house of Gani" was fair-complexioned, while Amin was dark-complexioned. He could not explain how he had happened to make the following statement in his police statement:—

“One of them who was fair-complexioned gave me a push and pushed me aside. Then both of them went into the temple. The fair-complexioned person who had given me a push pulled down the flag along with its stick.”

Shelar further deposed:

“Apart from struggling with me for taking away the flag the accused did not do anything to me. I had a lathi in my hand but when the accused pushed me the lathi fell down. This push was given before Constable Davrung came to my help. No struggle took place between the accused or either of them and Davrung. The only struggle which took place was between the accused and myself.”

He has admitted that both the accused were stronger than he was and that he and Davrung neither chased the accused nor even attempted to run after them. Before the Magistrate, however, Shelar's case was that a tug-of-war over the flag took place between him and both the accused for about ten minutes and that the accused dragged him for a distance of 100 paces, while he kept holding on to one end of the stick to which the flag was tied. The flag-stick which was a 'muddemal' article before the Magistrate is described in the judgment of the Magistrate as being two and a half feet in length, of dry bamboo with a circumference of about two and a half inches. No damage has been caused to the flag or the flag-stick nor has either Shelar or Davrung suffered the least injury. Had Shelar been pushed and fallen down and if there was in fact a struggle as deposed by him, there would certainly have been some bruises or abrasions on him and the flag-stick would have snapped and the flag got torn. In his police statement recorded on May 11, 1970 as also in his F.I.R. Shelar has referred to the disputed structure as a temple. In the witness-box he admitted that the structure did not appear to be a temple and sought to explain away his description of it as a temple by saying that when he was first posted there on guard duty he was informed that there was a dispute between the Hindus and the Muslims as to whether it was a temple or not. He has further deposed that the flag which was placed on the disputed structure was a Shiv Sena flag, and that after he had retrieved it, he had first replaced the flag and had then gone to the Octroi Chowki to ring up the police station. He was immediately faced with what he had stated before the Magistrate, namely:

“Then the accused went away towards Mohalla. Then I kept the flag with me and I informed the Police on telephone. I was told on telephone by P.S.O. to keep the flag on the spot where it was and I, accordingly fixed that flag there.”

He has admitted that it was a very hot day and that there was no shade at the disputed structure and that the nearest shade was the Octroi Chowki. It was put to him that at the time of the said alleged incident he was not at the disputed structure or at his post of duty, implying thereby that he was at the Octroi Chowki to shelter himself

from the sun. He has denied this suggestion. His denial does not carry much conviction.

93.10 In cross-examination, Davrung deposed that he had been assigned fixed-point duty at the disputed structure a couple of days after his arrival in Mahad on April 6, 1970. It was put to him that he was not at the Octroi Chowki on the day of the incident but had gone for lunch to his native village Vahoor, at a distance of four to five miles from Mahad, on the road to Bombay. In order to repudiate this suggestion Davrung went to the length of saying that during his entire stay in Mahad he had not once looked up his family in Vahoor and that his father used to meet him when he came to Mahad for shopping. He has further stated that sometimes he used to take his meals in hotels and sometimes his father brought meals for him and that on the day in question his father had come to Mahad at about 10 a.m. bringing his lunch. He at first deposed that he had seen both the accused five or six times prior to May 8, 1970 and after they were arrested he had come to know their names at the police station. He then added that even prior to that, he had come to know their names on May 8, 1970 because the Nakedar had told him that one of the accused was Amin Pansare and the other was from "the house of Gani". As mentioned earlier, Nakedar Gurav had deposed before the Magistrate that he did not have any conversation either with Shelar or Davrung after they came to the Octroi Chowki. Davrung was also faced with his police statement recorded on May 9, 1970 by P.S.I., Gadkar. In his said statement he has not mentioned that one of the accused was Amin Pansare and the other was from "the house of Gani". All that he has stated in his said police statement is:

"I know both the persons well but I do not know their full names.

I know that they are drivers."

Before the Magistrate he had deposed that the accused were not known to him prior to the said incident. Faced with this statement on oath, he admitted in the witness-box that he did not know either of the accused prior to May 8, 1970. While in his affidavit he had stated that he saw the two accused struggling with Shelar and Shelar trying to snatch away the flag-stick from the accused who was fair and well-built and whom he had later identified at the police station as Abdul Samad Abdul Gani Pansare, in cross-examination he was forced to admit that as he was having his lunch at the Octroi Chowki he did not see any struggle and did not know which of the two accused had removed the flag. His subsequent police statement for the purpose of identification of the accused was recorded on May 11, 1970. He has stated therein:

"The person who is shown to me and who gives his name as Abdul Samad Abdul Gani Pansare from Mahad Muslim Mohalla had gone to Mahikavati Mandir last Friday and had removed the flag."

He was unable to explain this statement. According to him, when the two accused saw him come running to help Shelar, they dropped the

flag and ran away and he and Shelar did not run after the accused as other persons had collected at the entrance of the 'mohalla'. When asked how this fact could prevent them from chasing or apprehending the accused, he was unable to give any answer. While Shelar has stated that they could not chase the accused because they ran away very fast towards their 'mohalla', according to Davrung when the accused began running away, Shelar and he were only at a distance of one or two paces from them. He has said that after the accused ran away, Shelar first telephoned to the police station and then replaced the flag, while in his cross-examination Shelar has stated that he first replaced the flag and then went to the Octroi Chowki to ring up the police station. Even on minor points Davrung has contradicted himself and made a sorry exhibition of himself in the witness-box. He has stated that he was not in the habit of sleeping at the Octroi Chowki after his lunch, and that while on night duty at the disputed structure, the guards used to sleep alternately, but not at the Octroi Naka. He was immediately faced with his deposition before the Magistrate, namely:

"Whenever we used to take food and sleep, we used to sleep at the Naka."

93.11 It may also be mentioned that no identification parade in respect of either of the accused was at any time held. The two accused were brought to the police station on May 11, 1970 and shown to the two constables and their subsequent police statements recorded. The failure to hold an identification parade appears to have been chronic with the Mahad Town Police Station, for the Judicial Magistrate in his judgment has observed that he has found this default on the part of the Mahad Town Police Station on many occasions before him.

93.12 In his judgment the Magistrate has pointed out a number of other contradictions and inconsistencies. In the evidence led before him none of the witnesses was sure what shouts for help Shelar gave or whether he called upon only the 'Nakedar' or upon both the Nakedar and Davrung for help. Before the Magistrate, Davrung stated that the struggle and the removal of the flag from the hand of the accused took place about twenty-five to thirty paces from the spot where the flag was originally fixed, while according to Shelar this took place at a distance of 100 paces from the place where the flag was fixed. Davrung stated before the Magistrate that the struggle which took place was between Abdul Samad Abdul Gani Pansare and Shelar, while in cross-examination Shelar has stated that the struggle was between both the accused and himself and that he had snatched away the flag from the hands of both of them. The Judicial Magistrate has also pointed out that the important evidence in the said case would have been of the Police Station Officer, Head Constable Yadav, whom Shelar alleges he telephoned and who, according to Shelar, told him to fix the flag at the original place, as also that of C.P.I., Saluke and Jamadar Sathe, both of whom had gone to the spot and, therefore, would have been able to state what Shelar had related to them. Their

evidence was not led and the Magistrate was informed that their police statements had not been recorded.

93.13 Shelar lodged his F.I.R. at about 8 p.m. that night, that is, almost six hours after the time of the said incident. Shelar was unable to explain the delay, changing one explanation for another in the course of the cross-examination.

93.14 C.P.I., Saluke was not examined as a prosecution witness in Criminal Case No. 426 of 1970. He was, however, a witness before the Commission. In his affidavit he has stated [P.W. 105/1(9-10)/3418(3)]:

“On 8th May 1970 I was at Mahad, Police Head Constable Mane informed me at about 1400 hours that two Muslim youths had removed the Bhagwa flag from the Mahikawati Temple. I immediately rushed to the Police Station and sent additional men for patrolling. *I went to Mahikawati temple and saw that the flag was there.* Then I enquired with the Police Constable on duty and he told me that two Muslim boys seeing him alone forcibly removed the flag and started running away, so he called for the other Policeman who was having his food in the nearby Municipal Naka and both of them followed the boys, caught hold of them, took back the flag and hoisted it again. I directed Police Constable Shelar, B. No. 259, to lodge his complaint. I also directed Police Jamadar Sathe to go to the police station and record Police Constable's complaint. I also returned to the police station at about 1430 hours. Shiv Sena leaders (1) Dagadu Balu Parte, (2) Anant Ramchandra Pawar, (3) Dnyaneshwar Sakharam Patekar, and (4) Madhukar Sitaram Pawar were sitting at the police station. Dagadu Parte told me that the Shiv Sena flag was removed and they wanted to see the place. I told him that the flag was in its place and that they need not go there. They then went away.

“At about 1450 hours when I was at the police station a phone message was received at the police station that two dry fish godowns of Gadi Tal belonging to Muslims were set on fire. I rushed to the spot in Police van with 5 Policemen who were available. Jamadar Sathe and other Policemen were there. The two godowns were burning. Some Hindus were standing at a distance. Fire-fighters came and started their work.”

In cross-examination he has deposed (P.W. 105/6-7/3421-22):

“When I went to the disputed place on May 8, 1970 Jamadar Sathe had preceded me to the spot. After I told Constable Shelar to go to the police station and lodge his complaint and directed Jamadar Sathe to go to the police station and record Shelar's complaint, Shelar and Sathe left. I also left at the same time. I was on a bicycle. They started going to the police station on foot. I did not see any sign of rioting or arson while going to the police station. Jamadar Sathe came to the police station some time after me but Shelar did not come there. About five or seven minutes before the telephone call was received at the police station that the

two godowns were on fire, Jamadar Sathe came and told me that a crowd had collected near Pimpalpar near Gadi Tal and he was going there to see what had happened. I did not ask Sathe where Shelar was.

“When the telephone call about the fire to the fish godowns was received at 2-50 p.m. on May 8, 1970, Dagdu Parte, Anant Pawar, Dnyaneshwar Patekar and Madhukar Pawar were at the police station. They left about five minutes thereafter. At about 3-15 p.m. when I was at Sarekar Lane I saw these four persons in the Hindu mob which was near the Muslim houses which had been set on fire.”

93.15 Circle Inspector Saluke does not, therefore, in any way advance the case that the two Muslims or either of them had removed the said flag. His knowledge consists merely of the information received from Head Constable Mane and what Dagadu Parte told him at the police station. Further, the story told to him by the two constables when he reached the spot is quite different from the story, or rather the several stories, these two constables have told on different occasions.

93.16 Since Shelar is alleged to have telephoned the police station immediately after the incident and given information about the removal of the flag, the normal and natural thing to expect would be for an entry to have been made in the station diary of the Mahad Town Police Station with respect to this telephone call. Strange to say, there is no entry in the station diary in respect of any such call or any information alleged to have been given on the telephone by Shelar. The absence of such an entry immediately makes suspect the entire evidence in support of this alleged incident.

The station diary of May 8, 1970

93.17 It will be convenient at this stage to set out the relevant entries from the station diary of the Mahad Town Police Station for May 8, 1970 (Ex. P 1189):

Serial No.	Time	C. R. No. and Section	Particulars
19.	13-10	.. Charge ..	Charge handed over to Head Constable Yadav B. No. 769.
20.	13-10	.. Charge ..	Takn charge as mentioned above.
21.	14-00	.. Entry ..	A telephone call is received from Gandhari Naka stating, "Some minor trouble has taken place at the Pansare and Deshmukh Mohallas. Send men." On a telephone call being received to the above effect, men are sent there.
22.	14-15	.. Entry ..	At the time mentioned in the margin, the persons namely (1) Anant Ramchandra Pawar, (2) Madhukar Sitaram Pawar, (3) Dagadu Babu

Serial No.	Time		C. R. No. and Section	Particulars
				Parte, (4) Dnyaneshwar Sakharam Patekar, all residing at Mahad, came to the Police Station and made inquiries about the flag on the Mahikavati. I, however, explained to them that the flag was there in a proper condition. There is no breach of the peace etc. at present. When the matter was being explained to them, the Jamadarsaheb was present.
23.	15-45	..	Entry ..	The persons mentioned in entry No. 22 went back to their respective houses.
24.	15-50	..	Entry ..	One unknown person made a telephone call stating, "Chichkar's godowns at Gadi Tal are on fire. Send men immediately." As he informed to that effect, the Inspectorsaheb and the Jamadar Shri Sathe are sent along with party to the scene of the incident. <i>As it is believed that the said trouble must have taken place on account of a rumour being spread that somebody removed the flag at Mahikavati, I have informed the D.S.P., Alibag, and the Dy. S.P., Mahad Division, at Goregaon and have made arrangements to ask for more police help.</i>
25.	17-25	...	Entry ..	At the time mentioned in the margin, the doctor from the Government Hospital made a telephone call stating that a number of injured persons had arrived and that a lot of people had collected to see them. Sent Constable Vise from here for dispersing the crowd.
26.	17-50	At the time mentioned in the margin, the Dy. S.P. came to Mahad with S.R.P. men and police party from Mahad. I reported the facts to him in detail. He sent 30 S.R.P. men to various places.
27.	19-35	..	Charge ..	Charge handed over to Jamadar Sathe."

93.18 All the above entries were made by Head Constable Yadav (P.W. 118). Yadav was attached to the Mahad Town Police Station as a head constable from May 1969 upto September or October 1970. On May 8, 1970 he took over charge as Police Station Officer from H.C., B. S. Mane at 1-10 p.m. and acted as Police Station Officer from 1-10 p.m. till 7-35 p.m. when he handed over charge to Jamadar Sathe.

93.19 It will be noticed that not only is there no entry in the station diary in respect of the telephone call alleged to have been made by Constable Shelar, but as entry No. 21 shows, the telephone call which was received at 2 p.m. was from Gandhari Naka to the effect that some minor trouble had taken place at Pansare Mohalla and Deshmukh Mohalla and police help should be sent there and that upon receipt of the said call some policemen were sent to Gandhari Naka.

93.20 The next entry, entry No. 22, deals with the visit to the police station of the four persons mentioned therein, namely, (1) Anant Ramchandra Pawar, (2) Madhukar Sitaram Pawar, (3) Dagadu Babu Parte, the Mahad Taluka Shakhpramukh of the Shiv Sena, and (4) Dnyaneshwar Sakharam Patekar. According to the said entry the said four persons came to the police station at 2-15 p.m. and inquired about the flag on the disputed structure and H.C., Yadav explained to them that the flag was on the disputed structure "in a proper condition". Entry No. 23 states the time these four persons left the police station and went back to their respective homes. Entries Nos. 22 and 23 are unusual and, according to C.P.I., Saluke (P.W. 105/8/3423), were made in order to provide an alibi to the said four persons, all of whom were accused in one of the riot cases, namely, in Sessions Case No. 11 of 1971 filed in pursuance of the F.I.R. lodged by Saluke (Ex. P 1103).

93.21 Prior to the Special Investigation Squad taking over the investigation of the riot cases, P.S.I., C. R. Salvi, of the Local Crime Branch, Alibag, was investigating the riot cases filed in respect of the offences committed during the Mahad disturbances. In the course of investigation of C.R. Nos. 55 and 56 of 1970 (Exs. P 1103 and P 1104) Salvi made a report dated May 29/June 1, 1970 (Ex. P 1181) to the S.P., Kolaba, in which he stated that H.C., Yadav had made entries in the station diary deliberately to see that the accused persons were let off. The entries referred to in the said report were the said entries Nos. 22, 23 and 24. The said report stated that according to the said entries the said four persons, who were Shiv Sena leaders, had come to the police station at 2-15 p.m. on May 8, 1970 and had gone back to their homes at 3-45 p.m. and that the fire to the godowns at Gadi Tal was at 3-50 p.m., while it had been ascertained in investigation that the dry fish godowns belonging to the Muslims situate at Gadi Tal had been set on fire between 2 p.m. and 2-30 p.m. and that a telephone call had been received at the police station at that very time. It may be mentioned that the statement in the said entry No. 24 that the godowns at Gadi Tal belonged to Chichkar was not correct, because

the two dry fish godowns at Gadi Tal which were set on fire during the disturbances belonged to Ibrahim Mohammed Taj and Ibrahim Hasanmiya Pansare. According to the said report, the said entries were made because it had been ascertained in investigation that C.P.I., Saluke had gone to the scene of arson at Gadi Tal between 2-45 p.m. and 3 p.m. and the said Shiv Sena leaders had left the police station at that very time. The said report further stated:

“As a result of the abovementioned entries, the accused are going to take a lot of advantage in defending themselves.”

In the said report a complaint was also made against Yadav that he had omitted to mention the telephone call from A.P.C., Shelar. The said report concluded with a request for an order directing further action to be taken against Yadav.

Head Constable Yadav's explanation

93.22 On May 11, 1970 P.S.I., Salvi recorded the police statement of H.C., Yadav (Ex. P 1180) in C.R. No. 55 of 1970 (Ex. 1103), the case against Anna Pawar and other Hindus, and not in C.R. No. 54 of 1970 the case against the two Muslims for trespassing into the disputed property and removing the said flag (P.W. 105/9/3424). It was apparently for this reason that the Magistrate who tried the case against the said two Muslims was informed that Yadav's police statement had not been recorded. Yadav gave a signed statement on June 26, 1970 (Ex. P 1533) in reply to the complaint made against him by P.S.I., Salvi in his said report. Yadav's said statement dated June 26, 1970 was recorded by Jamadar Sathe. In his said police statement (Ex. P 1180) Yadav *inter alia* stated as follows:—

“When I was in charge, a telephone call was received from the Gandhari Naka at about 1400 hours stating, “A minor trouble has taken place in Pansare and Deshmukh Mohallas, Send men.” I have made an entry at entry No. 21, in the station diary about the telephone call to that effect being received and I sent Jamadar Sathe there after telling him the facts. At that time, a telephone call had also been received from Constable D. D. Shelar also stating “Two Muslims, by pushing us away, had removed the Shiv Sena flag which was hoisted on the Mahikavati Temple. We snatched it and have put it back at its place”. But as telephone calls were being received from the town one after the other, the entry in respect thereof remained to be made in the station diary through oversight. However, I had sent Head Constable B. S. Mane to inform the Circle Police Inspector, Shri Salunke, about what was told on the telephone, the reason being that the Sub-Inspector was on leave. Further I had made a telephone call in that respect to the Deputy's Office.

“Thereafter at about 14-15 hours (1) Anant Ramchandra Pawar, (2) Madhukar Sitaram Pawar, (3) Dagdu Babu Parte, and (4) Dnyaneshwar Sakharam Patekar came to the police station and made inquiries about the Shiv Sena flag hoisted on the Mahikavati Temple. I told them that the flag was there at its place, that there was nothing

like breach of the peace and that they also should remain peaceful. At that very time, Jamadar Sathe too had come to the police station from the Mahikavati Temple. Jamadar Sathe also had told those persons the facts about the flag. All four of them left the police station at 15-45 hours. I made an entry in respect thereof at entry No. 23 in the station diary.

"I had sent Head Constable Mane to inform the Circle Police Inspector about the facts relating to the Mahikavati flag. According to that, the C.P.I. had come to the police station after 15 to 20 minutes and had gone away towards the Mahikavati Temple. Anant Ramchandra Pawar and others, in all 4 persons, were at the police station at the time when he returned from there. He told them also that the Mahikavati flag was at its place and that they should remain peaceful. Thereupon they went away. At that very time a telephone call was received stating that an unknown person had caused fires to the fish-godowns of Shri Chichkar at Gadi Tal. I informed the C.P.I. about it. He went towards that side taking constables with him. Jamadar Sathe also had already left.... As a riot had taken place in the town and as fires had been caused, I have made trunk calls to Alibag, Mangaon, Poladpur and Goregaon through the plain-clothes duty Head Constable Mane asking for police party by stating that men from the Police had been sent to Goregaon for bandobast."

93.23 Yadav's said signed statement dated June 26, 1970 (Ex. P 1533) was as follows:—

"On 8th May 1970 I was on duty as Police Station Officer from 1310 hrs. to 1935 hrs. At about 1400 hrs. a telephone message was received from Gandhari Naka that someone had snatched away the flag after giving a push and fist blows to Constable D. D. Shelar. An entry to that effect remained to be done because soon after, another telephone call came and, therefore, in respect of the snatching away of the flag an entry at serial No. 21 at 1400 hrs. was made. As this entry was made in a hurry, there has been a mistake in respect of the contents due to inadvertence. As I was confused, I had consulted Kokane Saheb in private as to what I should do and, therefore, I have not recorded the entry to the effect that I had made a call to the office of the S.D.P.O. Similarly, four persons — Dagadu Babu Parte, etc. of Shiv Sena came to the police station and started arguing about the removal of the flag and, therefore, in the interest of our protection and that later these persons who are social and political leaders should not make false complaints against us of improper behaviour etc., with the public, and as the prevailing atmosphere in Mahad was generally polluted, I made the entry in haste and fear, not then knowing that such an entry would be to the advantage of these persons, as reported by the P.S.I., C.I.D. (Crime). I had then no idea and, therefore, these confused entries have been made due to misunderstanding. In this I had no *mala fide* intention of helping the accused. Therefore,

I request that Your Honour should give sympathetic consideration to the general circumstances in which I was then placed."

93.24 Thus, according to Yadav's police statement, the first telephone call was the one at 2 p.m. from Gandhari Naka about the trouble which had taken place at Pansare Mohalla and Deshmukh Mohalla and the second telephone call was from A.P.C., Shelar about the removal of the said flag by the Muslims, and the explanation given by him for not making any entry in respect of the said telephone call from Constable Shelar was that at that time a number of telephone calls, one after the other, were being received at the police station. According to Yadav's said subsequent signed statement, however, the first telephone call was in respect of the removal of the said flag, and the explanation for not making an entry in respect of the said call in the station diary was that an entry could not be made because soon after the said call had been received, another telephone call was received at the police station.

93.25 Head Constable Yadav had not filed any affidavit before the Commission. At the insistence of the Commission he was called as a witness on behalf of the Executive Magistrates and District Police Officers. He fared badly in the witness-box and floundered through one futile excuse after another in an attempt to explain away the entries made by him and his omission to record the alleged telephone call of Constable Shelar. The important passages from his evidence require to be quoted in *extenso* as they speak for themselves. He deposed (P.W. 118/2-10/3943-9):

"On May 8, 1970 I was on duty as Police Station Officer from 1-10 p.m. to 7-35 p.m. At about 2 p.m. a telephone call was received from Gandhari Naka that a Muslim had in a drunken condition removed the flag and had slapped Constable Shelar (P.W. 99). Shelar himself had rung up. I forgot to make any entry of this telephone call in the Station Diary. Within two or three minutes of this telephone call I received another call to the effect that some trouble had taken place in Pansare Mohalla and Deshmukh Mohalla and that I should send some policemen there. It was because of this second telephone call that I forgot to make the entry about the first telephone call relating to the removal of the flag. I, however, made the entry with respect to the second telephone call. This is entry No. 21 of Exhibit P 1189. The contents of that entry are correct. On receipt of the second telephone call I sent Picket Constable B. A. Pardhi to call Circle Inspector Saluke (P.W. 105), Police Jamadar A. G. Sathe and other policemen from their respective residences for the purpose of bandobast in Deshmukh Mohalla and Pansare Mohalla.

To Commission:

Though I forgot to make the entry about the first telephone call, I sent policemen for bandobast in pursuance thereof.

Q.: When did you send policemen for bandobast in pursuance of the first telephone call?

A.: I sent Picket Constable B. A. Pardhi to inform Salunke, Jamadar Sathe and some policemen, as a result of which some policemen went directly to Gandhari Naka and some policemen came first to the police station and then went to Gandhari Naka.

(Note.—The witness has answered this question after it has been repeated thrice.)

To Mr. Rajadhyaksha :

“I knew Anant Ramchandra Pawar, Madhukar Sitaram Pawar, Dagdu Babu Parte and Dnyaneshwar Sakharam Patekar as being residents of Mahad. I did not know anything else about them as I had come to Mahad only four or five months prior to May 1970. I saw all these four persons at the police station on May 8, 1970. They had come to the police station at 3-15 p.m. They had come to complain about the removal of the flag and they wanted their complaint to be recorded. I told them that the flag was in its proper place and therefore there was no necessity of recording their complaint. I persuaded them not to spread this story in the town. Thereafter arson took place in the town. These four persons remained at the police station for a considerable time.

Q.: What time did they leave the police station ?

A.: They were at the police station for a considerable time.

I have made an entry in the Station Diary with respect to the time at which they left the police station, being entry No. 23 of Exhibit P 1189. In the hurry the time of '15-45' hrs. mentioned in entry No. 23 may be more or less by 10 to 15 minutes than the actual time. The clock at the police station had stopped but my wrist-watch was working. My explanation was asked for with respect to this entry and I gave my explanation in writing on June 26, 1970.... To questions by Mr. Rahim-Quraishi:

“I had not made anywhere a note of the telephone call received from Shelar. I remember that call. I have got a good memory.

“I cannot explain why and how I have described Anantrao Pawar and the three other persons as “social and political leaders” in my signed statement Exhibit P 1533, though I only knew them as residents of Mahad. That they were social and political leaders was told to me by Jamadar A. G. Sathe when he took from me the signed statement Exhibit P 1533. Though I did not know that Anantrao Pawar and the three others were social or political leaders, I none the less made the entry No. 22 of Exhibit P 1189, lest they might make allegations against me for not having taken down their complaint. I have not made a similar entry at any other time. I admit that entry No. 22 does not mention that these persons had come for making a complaint but states that they had come to make inquiry about the removal of the flag. I made entry No. 23 about the departure from the police station of these four persons because at that time they left the police station.

"Prior to May 8, 1970 I have acted as Police Station Officer on many occasions. Persons very often come to the police station for making inquiries.

"I was remembering on May 9, 1970 that Shelar had rung me up at about 2 p.m. on May 8, 1970. I, however, did not remember on May 9, 1970 that I had not made an entry with regard to his call in the Station Diary. It was only after I handed over charge to the Jamadar on May 8, 1970 that I remembered that I had forgotten to make the entry with respect to Shelar's call. I now say that I remembered this fact the next day, that is, on May 9, 1970, while giving my statement. I now say that no statement of mine was recorded on May 9, 1970 but I recollected on May 9, 1970 that I had forgotten to make the entry. As I had handed over the charge to the Jamadar on May 8, 1970 at about 7-35 p.m., I did not do anything in the matter. I admit that according to my police statement Exhibit P 1180, the first call which I received was from Gandhari Naka at about 2 p.m. about some minor trouble having taken place in Pansare Mohalla and Deshmukh Mohalla and after I had made the entry with respect to that call, I received the call about two Muslims pushing Shelar away and snatching away the flag. I admit that there is no mention of any Muslim in a drunken condition either in Exhibit P 1180 or in Exhibit P 1533. I admit that in Exhibit P 1533 I have not mentioned that the telephone call was that a Muslim had snatched away the flag. All that I have mentioned in Exhibit P 1533 is that "someone" had snatched away the flag. At the time my police statement was recorded, I had stated that I had sent Picket Constable Pardhi and Head Constable Mane to inform Salunke and Jamadar Sathe about the telephone call. I cannot explain why, according to my police statement, Sathe was at the police station when the telephone call was received and I sent him from the police station after telling him the facts or why Picket Constable Pardhi's name is not mentioned in the police statement. I had forgotten to mention in my examination-in-chief the fact that I had also sent Head Constable Mane. I now admit that I do not have a good memory.

"(Shown entry No. 24 of Exhibit P 1189.) I had received a telephone call that Chichkar's godowns in Gadi Tal were on fire. I subsequently came to learn that there were no godowns of Chichkar in Gadi Tal. I did not recollect, even when I wrote about the removal of the flag in entry No. 24 which was made at 3-50 p.m. or in entry No. 22 which was made at 2-15 p.m., about the telephone call which I received at 2 p.m. informing me about the removal of the flag. This was because I was busy putting through trunk-calls to the S.D.P.O. and the S.P. I admit that the trunk-calls to the S.P. and the S.D.P.O. were made after I received the telephone call at 3-50 p.m. about the fire to Chichkar's godowns. I now say that I could not make the entry in respect of the telephone call about the removal of the flag received at

2 p.m. because between 3-45 p.m. and 3-50 p.m. I had received a number of calls.

"In my statement dated June 26, 1970 (Exhibit P 1533), while referring to entry No. 21 I have stated 'As this entry was made in a hurry, there has been a mistake in respect of the contents due to inadvertence'. The only mistake was that I have forgotten to make the entry about the telephone call giving information about the removal of the flag. It is not true that I did not receive any telephone call about the removal of the flag."

93.26 Head Constable Yadav's said police statement, his said signed statement and his evidence before the Commission are replete with contradictions *inter se*, none of which he was able to reconcile. It is not necessary to detail these contradictions as they are apparent on a bare reading of the said two statements and his deposition.

93.27 Some salient facts, however, emerge from all this. Entry No. 21 in the station diary and Yadav's very first police statement (Ex. P 1180) show that the first telephone call received at the police station was from Gandhari Naka at about 2 p.m. about some minor trouble having taken place in Pansare Mohalla and Deshmukh Mohalla. Further, in entry No. 22 purporting to record the conversation Yadav had with Anna Pawar and the three other Shiv Sena leaders, there is no mention of any Muslims having removed the flag. Entry No. 24 expresses Yadav's belief that the "trouble must have taken place on account of a rumour being spread that somebody removed the flag at Mahikavati". This entry too does not state that a Muslim had removed the flag. Yadav's subsequent signed statement (Ex. P 1533) also does not mention that a Muslim had removed the flag but merely states that someone had snatched away the flag. There can, therefore, be no doubt that the only reason why no entry was made in the station diary in respect of the said alleged telephone call from Constable Shelar was that there never was any such telephone call and the alleged removal of the flag from the disputed structure was not a fact but merely a rumour spread in the town.

Whether the flag was removed from the disputed structure ?

93.28 A bare reading side by side of the evidence of Constables Shelar and Devrung and Head Constable Yadav coupled with the fact that the only entry in the station diary of a telephone call at the relevant time is the one from Gandhari Naka of a minor trouble having taken place at Pansare Mohalla and Deshmukh Mohalla and the absence in the station diary of any entry about a telephone call from Constable Shelar about the assault on him and the removal of the flag leaves no doubt that not only the story of the two Muslims assaulting Constable Shelar and removing the flag and attempting to take it away is a concocted one, but that the whole story about the removal of the flag is an equally false and concocted one. These three witnesses have not shown the slightest regard for the truth and their evidence requires to be rejected *in toto*. It is clear that the flag was

never removed or attempted to be removed from the disputed structure. This story of the removal of the flag by the Muslims was, therefore, a rumour deliberately spread to exacerbate the resentment and anger felt by the Hindus against the Muslims on learning about the attack by the Muslims on the Shiv Jayanti procession in Bhiwandi.

The rumours about the removal of the flag

93.29 The rumours that two Muslims had assaulted the police constable on duty at the disputed structure and had removed the flag therefrom and had attempted to take it away spread all over the town in no time and, in the words of Savant, "It spread like wild fire in the town" and "the forcible removal of the flag was taken as an affront to the Hindus and a calculated insult to Mahikavati". [P.W. 97/1(18)/3212(10), P.W. 98/1(31)/3243(9), C.W. 29/1(29)/3252(27), C.W. 30/1(20)/3270(9-10), C.W. 31/1(12)/3276(9)]. The evidence does not disclose who was the originator of the said rumour, but it does show who were the persons who took a prominent part in spreading it. It is significant that very soon after the flag is alleged to have been removed, Anna Ramchandra Pawar, the Shiv Sena worker who re-hoisted the flag on the disputed structure on January 20, 1970, Madhukar Sitaram Pawar (the deponent of affidavit No. 393), the Mahad Shahar Shakhapramukh of the Shiv Sena and Dagdu Babu Parte (the deponent of affidavit No. 392), the Mahad Taluka Shakhapramukh of the Shiv Sena, and Dnyaneshwar Sakharam Patekar, another Shiv Sena worker, should have come to the police station at about 2-15 p.m. to make inquiries about the removal of the flag. Madhukar Pawar, Dagdu Parte and Dnyaneshwar Patekar had appeared before the Commission through their Counsel, Mr. A. K. Chaphekar, but none of them has stepped into the witness-box and on the Commission repeatedly inquiring from Mr. Chaphekar whether he wanted to have summonses issued to them to appear and give evidence, Mr. Chaphekar stated that it was no use as none of them desired to give evidence. These three and Anant Pawar were accused Nos. 6, 10, 11 and 17 in Sessions Case No. 11 of 1971 filed pursuant to the F.I.R. in C.R. No. 55 of 1970 (Ex. P 1103) but by the time the evidence with respect to the Mahad disturbances came to be recorded by the Commission the said case had been disposed of and they were acquitted by the Sessions Court. The question of any prejudice being caused to them in their defence in the Sessions trial by reason of their giving evidence before the Commission, therefore, did not arise. The only conclusion one can, therefore, come to is that they did not want to give evidence before the Commission because they did not wish to submit themselves to cross-examination.

93.30 According to the affidavit of Shantaram S. Adivarekar (affidavit No. 381), he heard some commotion in the afternoon of May 8, 1970 and on coming out to see what had happened, he saw many people running towards the Mamlatdar's office. He thereupon hurried to the police station and inquired from the constable who was present

as to what had happened, but the constable could not tell him. Dagdu Parte, Madhukar Pawar, Anna Pawar and Dnyaneshwar Patekar who were there, however, told him that "the Bhagwa flag which was on the Mahikawati Temple had been taken down by some Muslims by beating the policeman on duty near the temple". According to him, the time when he received this information from them was about 2 p.m.

93.31 According to the affidavits of Dagdu Parte and Madhukar Pawar, they, along with Dnyaneshwar Patekar and Anna Pawar, went to the police station to give a complaint about the removal of the flag and to demand that measures should be taken against the persons responsible.

93.32 It is, therefore, clear on the record that these four persons, namely, Anant *alias* Anna Ramchandra Pawar, Madhukar Sitaram Pawar, the Mahad Shahr Shakhapramukh of the Shiv Sena, Dagdu Babu Parte, the Mahad Taluka Shakhapramukh of the Shiv Sena, and Dnyaneshwar Sakharam Patekar, took a prominent part in the spreading of the rumour that the flag had been removed from the disputed structure by some Muslims. It is unfortunate that the two Constables and the Head Constable should have become parties to this. The pro-Shiv Sena sympathies of Head Constable Yadav are apparent from his attempt to make false entries in the station diary in order to provide an alibi for these four persons. The attitude of the Mahad Town Police Station appears to have been throughout indulgent and partial towards the Shiv Sena as is shown by a number of facts on the record; for instance, the off-hand and insulting manner in which P.S.I., Vichare treated Dr. Mrs. Kazi when she complained to him about the Shiv Sena demonstration on the night of December 21, 1969; P.S.I., Vichare's behaviour towards Anna Pawar and the two other Shiv Sena workers when they rehoisted the flag on the disputed structure on January 20, 1970 and his helping "the Mahikavati cause" by filing the proceedings under section 145, Cr. P.C. As we have seen, by his letter dated April 4, 1970 (Ex. No. 70) S. B. Savant had also complained about the cordial relations between Dagdu Parte and Madhukar Pawar and the local police.

The result of the rumour

93.33 The Hindus of Mahad were obviously filled with resentment and anger against the Muslims on learning the news about the Muslim attack on the Shiv Jayanti procession in Bhiwandi, which had been announced on the radio, and had appeared in the morning newspapers. On the rumour that some Muslims had beaten up the constable on duty and had removed the flag from the disputed structure spreading in the town, these feelings were exacerbated. To many a Hindu the beating up of the constable and the removal of the flag from the disputed structure must have seemed like an act preparatory to an attack by the Muslims on the Hindus in Mahad, and the resentment and anger felt by the Hindus in no time flared up into violence and arson.

Conclusions

93.34. The following facts have been established by the evidence, and the following conclusions reached by the Commission, on the points dealt with and discussed in the chapter:—

- (1) The flag on the disputed structure was not removed either by a Muslim or by anyone else and the rumours that it was removed by some Muslims was false and was mischievously and deliberately circulated with a view to fan further the anger and resentment felt by Hindus against the Muslims on learning about the attack by the Muslims on the Shiv Jayanti procession in Bhiwandi.
- (2) The local Shiv Sena leaders took a prominent part in the spreading of this rumour.
- (3) The immediate or proximate cause of the Mahad disturbances was the circulation of the false rumour that two Muslims had, after beating up the police constable on duty, removed the flag from the disputed structure. This rumour fanned the resentment and anger felt by the Hindus against the Muslims into violence and arson.
- (4) Armed Police Constables Dattatraya Dagadu Shelar (P.W. 99) and Tukaram Anaji Davrung (P.W. 100), (Buckle Nos. 359 and 519 respectively), lent themselves to this false rumour and became parties to its circulation.

* * *

CHAPTER 94
THE COURSE OF THE MAHAD DISTURBANCES

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CHAPTER 94

THE COURSE OF THE MAHAD DISTURBANCES

The evidence about the disturbances

94.1 The evidence about the disturbances which took place at Mahad consists of the entries in the station diary of May 8, 1970 of the Mahad Town Police Station (Ex. P 1189), the oral evidence of C.P.I., Saluke [P.W. 105/1(9-14)/3418(3-5), 7/3421-2, 10-16/3425-3427], A.H.C., Shirke (P.W. 103/1-3/3375-6. Taluka Executive Magistrate Attarde [P.W. 104/1(3-5)/3378(2-3), 4/3380], S.P., Khan [P.W. 97/1 (19)/3212(11), 4/3219-20], Dr. Mrs. Kazi [M.M.W. 1/1/(32)/3317(16), 12/3324, 14/3325, 36/3335] and Ebrahim Chichkar [C.W. 30/1(21)/3270(10-11)], the three F.I.Rs. in respect of the offences committed during the course of the disturbances, lodged that very night, two of them by C.P.I., Saluke (Exs. P 1103 and P 1104) and the third by P.S.I., K. M. Kulkarni of S.R.P. Group I, Poona (Ex. P 1113) and the panchnama of the scenes of offences made by P.S.I., Salvi of the Local Crime Branch, Alibag, made on May 8, 1970 (Ex. P 1105).

94.2 Appendix P to this Report is a sketch of Mahad Town showing the incidents which took place in Mahad during the course of the disturbances.

The trouble at Pansare Mohalla and Deshmukh Mohalla

94.3 According to entry No. 21 in the station diary of May 8, 1970 of the Mahad Town Police Station (Ex. P 1189) trouble first took place at Pansare Mohalla and Deshmukh Mohalla and the news of it was received at the Mahad Town Police Station by a telephone call made from Gandhari Naka at 2 p.m. for police help to be sent there. There is no other evidence of what transpired at these places. According to the police statement of Head Constable Yadav recorded on May 11, 1970 (Ex. P 1180), on receiving this telephone call he sent from the Police Station Jamadar Sathe to see what the matter was. According to his evidence before the Commission, on receiving this telephone call, he sent Picket Constable B. A. Pardhi to call C.P.I., Saluke and Jamadar Sathe and some policemen from their respective residences for the purpose of bandobast in these two 'mohallas' (P.W. 118/2/3944). Yadav's evidence, however, is so hopelessly contradictory and is untrue in so many respects that no reliance can be placed upon it. Apart from the telephone message recorded in the station diary and the evidence of Head Constable Yadav referred to above, there is no evidence on the record to show what the trouble which took place at the said two 'mohallas' was and it is, therefore, not

possible to say whether any trouble did actually take place in Pansare Mohalla or Deshmukh Mohalla.

The arson at Gadi Tal

94.4 After telling Constable Shelar to go to the police station and lodge his complaint and directing Jamadar Sathe to go with him and record it, C.P.I., Saluke left the disputed property on his bicycle and went to the police station. On the way he did not see any sign of rioting or arson. He reached the police station at about 2-30 p.m. He found the four Shiv Sena leaders, Anant *alias* Anna Ramchandra Pawar, Madhukar Sitaram Pawar, the Mahad Shahar Shakhapramukh of the Shiv Sena, Dagdu Babu Parte, the Mahad Taluka Shakhapramukh of the Shiv Sena, and Dnyaneshwar Sakharam Patekar, at the police station. They told him that the Shiv Sena flag had been removed from the disputed structure and that they wanted to see the place. Saluke assured them that the flag was in its place and they need not go there. At about 2-45 p.m. Jamadar Sathe came and told him that a crowd had collected near Pimparpur Naka near Gadi Tal and that he was going there to see what had happened. At about 2-50 p.m. a telephonic message was received at the police station that two dry fish godowns at Gadi Tal, owned by Ibrahim Mohammad Taj and Ibrahim Hasanmiya Pansare, had been set on fire. About five minutes thereafter the four Shiv Sena leaders left the police station. Saluke thereafter set out for Gadi Tal with five policemen who were available, including A.H.C., Kashinath Aba Shirke, Buckle No. 38 (P.W. 103). When Saluke reached Gadi Tal, Jamadar Sathe and some other policemen already there. The two godowns were burning and some Hindus were standing at a distance. The fire-engines had already come on the scene and had commenced fire-fighting operations. Saluke then took four more police constables in the police van and patrolled the area from Gadi Tal to the S.T. stand and then returned to the police station. He found all the shops closed. As the situation was tense, he directed Writer Head Constable to send a report to the Taluka Executive Magistrate, Mahad, requesting him to issue an order under section 144, Cr. P.C. He also directed the Police Station Officer, Head Constable Yadav, to contact Alibag on the telephone and inform the S.P. and to request for additional help, as also to inform the S.D.P.O. who was camping at Goregaon. He then again went out patrolling.

94.5 Taluka Executive Magistrate Attarde received a telephone call from Shantaram Adivarekar, a press reporter, to the effect that fire had broken out in two or three buildings at Gadi Tal. Attarde thereupon went to Gadi Tal and saw that the municipal fire-engine and the Police were present. At about 3-45 p.m. the Additional Tahsildar, S. R. Nhavi, came to Gadi Tal on bicycle and informed him that trouble had taken place near Salvad Naka on account of the removal by someone of the Shiv Sena flag from the disputed structure and that a clash had taken place between the Hindus and the Muslims

and the situation was about to go out of control. Attarde then returned to his office, made inquiries at the police station and learnt that a police party had gone out for bandobast. He then booked a trunk call to Mangaon to contact the S.D.M., but he was told by his Aval Karkun that the S.D.M. had proceeded to Mhasla. As he could not get immediate telephone connection with Mhasla, he booked an urgent call to Alibag. Before he could get this connection, the Addl. D.M., Ghalwadkar, talked to him on the telephone and inquired about the situation. On Attarde explaining the situation to him, Ghalwadkar told him that he would be coming to Mahad within a few hours and that Attarde should promulgate orders under section 144, Cr.P.C. In the meantime a report containing a similar request was received from the Police Station Officer. Accordingly at 5 p.m. Attarde promulgated an order under section 144, Cr.P.C. to be in force for a period of 15 days.

94.6 On May 8, 1970, while Dr. Mrs. Kazi was in her dispensary at Salvad Naka, she observed at about 3 p.m. or 3-25 p.m. a sudden panic amongst the people and people running hither and thither. Her servant brought her car and took her home and she found that her children were safe. She did not see any sign of rioting in her locality, though she saw people running in a confused manner. She then went out to see what the matter was. She went upto Gandhari Naka and saw clouds of smoke rising from the eastern part of the town. She personally did not witness any incident of rioting. She tried to contact the Taluka Executive Magistrate, the Mahad Town Police Station and the S.D.P.O. who was camping at Goregaon, but she found that her telephone was out of order. She has deposed that for about three days prior to May 8, 1970, the telephones in Mahad of both the Muslims as well as the Hindus were regularly getting out of order. Because of the intervening mobs, she could not send any messenger either to the office of the Taluka Executive Magistrate or to the police station. She, therefore, sent her car with two persons in it to Laknpala to her brother-in-law Khalil Kazi for him to contact the S.D.P.O. personally or by telephone and her station wagon with two other persons to Goregaon to contact the S.D.P.O. On receiving her message, Khalil Kazi informed both the S.D.P.O. and the S.P. on the telephone and also went to contact the S.D.P.O. personally. The persons who had left in the station wagon also contacted the S.D.P.O.

The arson at Sarekar Lane

94.7 When in the course of his patrolling C.P.I., Saluke came near Tambet Alli, he saw a mob of Hindus on the road, armed with lathis, proceeding towards Salwad Naka. On seeing the police van the persons in the mob ran away into lanes, by-lanes and houses. Someone from that mob shouted that the Muslims were going to attack the Hindus. Saluke tried to pacify them telling them that the Police would be vigilant and they should all go back to their houses and not create trouble. Saluke posted police pickets at the spot

and proceeded to Salwad Naka with the remaining policemen. At Salwad Naka he saw a Muslim mob armed with lathis and axes. One of the Muslims in the mob was carrying a sword. Saluke ordered the Muslim mob to disperse. At the same time he saw smoke coming out from Sarekar Lane, where the house of Abdul Kadir Kunke and cattle-sheds of Ebrahim Tayyabkhan Chichkar had been set on fire, Saluke threatened the Muslim mob with a lathi-charge and the mob dispersed. A fire-engine came there and commenced fire-fighting operations.

94.8 The details of the arson at Sarekar Lane are to be found in the evidence of Ebrahim Chichkar. Chichkar's house was situate in a mixed locality, but the Hindu population outnumbered the Muslims. By about 3 p.m. a Hindu mob came to his house and began pelting stones. His servants, one of them a Hindu and the other a Muslim, ran away out of fear. After pelting stones the mob went to the nearby house of Abdul Kadir Kunke and set fire to it. Thereafter it set fire to Chichkar's stacks of hay and straw in the adjoining field. Some persons in the mob were carrying kerosene tins in which balls of waste cloth were dipped, set ablaze and thrown into Chichkar's rear compound where he had his cattle-sheds. The sheds caught fire and some of the buffaloes were burnt to death. Chichkar tried to untether some of the buffaloes, but because of the fire-balls being thrown by the Hindu rioters in rapid succession he was unable to do so. He himself received some burns. The mob then wanted to set fire to his residential house. The timely arrival of C.P.I., Saluke and his police party caused the mob to disperse. According to Saluke, it was in this Hindu mob that he saw Dagdu Parte, Anna Pawar, Dnyaneshwar Patekar and Madhukar Pawar.

The police firings at Kajalpura

94.9 By this time Hindu and Muslim mobs had gathered again at Kajalpura, a little distance from Sarekar Lane, and had started throwing stones at each other. After giving a warning which went unheeded, C.P.I., Saluke ordered a lathi-charge. As a result of the lathi-charge, the Muslim mob retreated a little, but the Hindu mob kept on advancing. The persons in this mob were armed with spears, axes, iron bars and sticks and were throwing stones. The intention of this mob was to attack the Muslim mob by pushing aside the police party which was separating the two mobs. As there was immediate danger to life and property, Saluke decided to open fire. He gave a warning through a megaphone which Constable Gaikwad was carrying with him. In spite of the warning, the mob did not disperse but continued to advance, throwing stones. Saluke himself received injuries to his chest and back due to this stone-throwing. Saluke then took out his .455 service revolver and fired four rounds towards the Hindu mobs. In this firing four Hindus were injured. By this time the Muslim mob had gathered near the house of one Kamble at a distance of about 150 feet from Kajalpura and had set fire to it. On seeing the said act of arson Saluke rushed to the spot. He saw

that this mob was armed with axes and lathis and that one of the Muslims in the mob was carrying a spear and another a sword. A Muslim from the mob attempted to attack Constable H. S. Bhoir (buckle No. 1142) with an axe. This attempt was foiled by Constable R. M. Bhoir (Buckle No. 1179). Constable H. S. Bhoir received a superficial cut. Saluke, after giving a warning, ordered a lathi-charge which proved ineffective. He thereupon, after giving repeated warnings, fired three rounds from his revolver and also ordered A.H.C., Shirke (P.W. 103) to fire one round from his .410 musket, which Shirke did. One Muslim was injured in this police firing and the mob dispersed. Meanwhile at about 4 p.m. some shops and a hotel situate in Bazar Peth were broken open and looted (Ex. P 1139).

94.10 The opening of fire by C.P.I., Saluke twice in rapid succession had its deterrent effect and the situation was brought under control.

The end of the disturbances

94.11 After some time Dy. S.P., Khan, S.D.P.O., Mahad, came to Mahad from Goregaon with an additional police force. These reinforcements were deployed in the town as a result of which normalcy was restored. At about 6-30 p.m. S.P., Khan arrived at Mahad. He had left Alibag on receiving information about the outbreak of the disturbances at Mahad, taking along with him 2 police sub-inspectors and 25 armed policemen from the Headquarters. He inspected the two places where arson had been committed, and began patrolling the town. At Sarekar Lane he saw a group of about 30 to 40 young Hindus, between the ages of 18 and 20 years, collected there. Khan had only four policemen with him at that time. He asked the said group to disperse. They started going in various directions, but again began collecting in the adjoining lanes and by-lanes. When he saw more persons joining them in the lanes and by-lanes, Khan sent a message to the police station asking for S.R.P. men to be sent to him. A section of the S.R.P. force consisting of ten constables came there. A stone was thrown at an S.R.P. man but it did not hit him. The police party tried to surround the group to round up the persons therein but four or five persons dashed into a nearby house. Khan chased them and went inside the house alone. Those persons surrounded him and refused to come out. Khan thereupon took out his revolver and threatened them and thus made them come with him. Other persons from the said mob had also run into different houses in different lanes and the police party went into the houses and arrested them. An offence was registered against these persons as C.R. No. 57 of 1970, the F.I.R. (Ex. P 1113) being lodged that night by Sub-Inspector K. M. Kulkarni of S.R.P. Group No. I, Poona.

94.12 The person in whose house Khan went to arrest him, namely, Suryakant Mahadeo More, has filed an affidavit (affidavit No. 390) before the commission making allegations that at that time he had returned from work and was just about to sit for his meals when he was wrongly arrested. More had appeared before the Commission

through Counsel Mr. Chaphekar. The allegations made by More in his affidavit were put to Khan in cross-examination by Mr. Chaphekar and were denied by him. More, however, did not step into the witness-box to substantiate his allegations, no doubt as he did not want to face cross-examination himself. I, therefore, accept Khan's evidence and disbelieve the allegations made by More.

94.13 No further incidents took place in Mahad and the disturbances did not recur.

94.14 All the incidents which took place in these disturbances were in the western part of the town. The Muslim locality in Kakar Tala in the eastern part of the town, though surrounded by Hindu localities, and the mixed locality of Shedav Naka, the easternmost part of the town, remained unaffected in the disturbances.

94.15 The Addl. D.M., Kolaba, arrived in Mahad at about 8-30 p.m. that night. He, along with the S.D.M. and Taluka Executive Magistrate, Attarde, took a round in the town. The Addl. D.M. thereafter issued instructions to Attarde to get the damage caused in the disturbances assessed in order that relief could be given immediately and for this purpose to take the help of the Additional Mamlatdars. Attarde accordingly made a rough assessment of the damage and submitted a note to the D.M.

Police bandobast after the disturbances

94.16 After reinforcements arrived in Mahad, additional points, such as Sarekar Lane, Tambat Alli and Gadi Tal, were manned and the pickets at Salvad Naka and the disputed structure were increased and the patrolling intensified (Ex. P 1100).

94.17 After he came to Mahad on May 9, 1970, D.M., Savanur felt that orders under section 37(1) and (3) of the Bombay Police Act, 1951, would be more effective than an order under section 144, Cr. P.C. Accordingly, under his instructions the Addl. D.M., Kolaba, issued an order under section 37(1) and (3) of the Bombay Police Act prohibiting within the municipal limits of Mahad from the noon of May 9, 1970 to the noon of May 23, 1970 any assembly of five or more persons, all processions and the carrying of all kinds of arms or other articles capable of being used for or causing physical violence or the carrying of corrosive substances or explosives or the carrying, collection and preparation of stones and other missiles or instruments or means of casting or impelling missiles (Ex. P 1094).

Savant's allegations against the Shiv Sena and the P.S.P. workers

94.18 S. B. Savant has alleged that the Shiv Sena and the P.S.P. workers took a leading part in the disturbances, that the local P.S.P. leaders did not take an active part in preventing the disturbances from spreading and that at some places the rioters were prevented by young Hindu Congress workers from looting the shops of the Muslims or setting them on fire. It is not the function of this Commission to determine who the actual rioters were or the identity of the persons

who committed offences in the course of these disturbances unless a finding thereon is material on the points which the Commission is asked to determine by the Terms of Reference. All that this Commission is required to do with respect to allegations such as this is to consider them broadly. Savant has sought to support his aforesaid allegations by pointing out that most of the Hindus arrested for committing arson were Shiv Sena and P.S.P. workers. He has also cited the case of a Muslim tailor named Sagar who had his shop at Bazar Peth just opposite the shop of another Muslim, A. R. Antulay. He has pointed out that while Antulay's shop was broken open and looted, Sagar's shop was not only left untouched, but on the contrary, Sagar was escorted by some persons from the Hindu mob to his residence which was in a predominantly Hindu locality. The reason he gave for this was that while Antulay belonged to the Congress, most of the rioters were P.S.P. workers and Sagar belonged to the P.S.P. [C.W. 29/1(29)/3252(27), 1(31)/3252(29), 1(34)/3252(33)]. When this was put to S.P., Khan, he has said that the political motive attributed to this incident by Savant was not justified or probable because there could not be much to loot in the shop of a tailor and possibly the rioters' own garments might have been in the said shop (P.W. 97/31/3240). Tipnis, however, admitted that Sagar belonged to the P.S.P. and thereafter to the Samyukta Socialist Party and that he had not suffered any loss or damage in the disturbances, while the shop of Antulay, just opposite Sagar's shop, was looted in the disturbances (C.W. 47/19-20/3972). Though it is not possible to give any definite finding on these facts and though there were other Muslim shops in Bazar Peth which were also not looted as pointed out by Saluke (P.W. 105/15-6/3427), Khan's explanation at least does not carry much conviction.

94.19 The conduct of Tipnis on May 8, 1970 can only be characterized as strange. He has deposed that on May 8, 1970 he was at home and at about noon came to learn from the newspapers about the Bhiwandj disturbances. He heard at about 4-30 p.m. that "very tense atmosphere was created as a result of the Bhagwa-Flag being removed by Muslim boys at Mahikawati." On inquiring about this incident he came to learn that S. B. Savant's son, Sudhir Savant (whom he has described in his affidavit as "an advocate, a member of the Municipality and Chairman of Urban Co-operative Bank and who has also applied for the Congress ticket for the election of the Assembly"), was "intermeddling and was taking an active part in visiting the police officers in connection with the said incidents." He has further stated in his affidavit [C.W. 47/1(28)/3965(17-8)]:

"Knowing full well that Mr. Savant would not leave any opportunity to malign me in any public incident in view of the impending elections I decided not to stir outside by residence. From 4-30 onwards I was receiving certain information regarding the riots. I also learnt that no prohibitory order under section 144, Cr. P.Code was also promulgated. I had to ascertain these facts and if such

order was promulgated, it was not possible for me to move about. I moved out of my residence at about 7-30 to 8-00 p.m. I started from my house, went on Savitri River Road and then via Arjunbhai Road entered the main road near the Vithoba Bridge, then I proceeded to the Old Municipal Road, then entered the Kave Ali and then went to Nana Purohit's house. I met Mr. Nana Purohit there and he informed me of all the efforts he made to pacify the rioters with the help of P.S.P. workers and not with the help of Congress workers as now alleged by Mr. Savant and then I returned home. As I was satisfied with what my colleague had done according to his capacity as was needed in the matter.

94.20 Tipnis's allegation that Savant's son Sudhir was "inter-meddling and was taking active part in visiting the police officers in connection with the said incidents" bears out Savant's contention that at some places the rioters were prevented by young Hindu Congress workers from looting the shops of Muslims or setting them on fire. Savant's charge that the local P.S.P. leaders did not take an active part in preventing the disturbances from spreading receives credence from the fact that on Tipnis's own admission, even though he learnt about the disturbances at 4-30 p.m., he did not choose to leave his residence till 7-30 p.m. or 8 p.m. He is a veteran politician who has been in public life for several decades and a respected citizen of Mahad. Had he gone about pacifying the crowds, his efforts would have certainly yielded some results. His excuse that he did not do so because Savant would make allegations against him in the next elections only requires to be stated to be rejected. It is not possible to believe that one, who had been in the political arena for so long and had been a long-standing political opponent and rival of Savant and had formed an opposition party in the municipality, namely, the Shahar Seva Samiti, against Savant's party, and worked against Savant in elections, should suddenly be afraid of the allegations which might be made against him by Savant.

94.21 In his affidavit Savant has praised C.P.I., Salukhe's handling of the situation. He also referred to two other incidents. He stated in his affidavit about the said two incidents as follows [C.W. 29/1(30)/3252(29)]:

"Another person who deserves special mention is one Shri Hasanmiya *alias* Bawashet Pansare, a Muslim leader who controlled the Muslim mob which being infuriated by the flames from the godown of Bawashet's own son in Gadi Tal wanted to attack the Hindu houses and shops adjoining the Muslim Mohalla. It was a mob of 100 to 150 persons, and but for Bawashet's sagacious and courageous handling of the situation there would have been gruesome scenes of mutual killings and destruction reminiscent of the events in Bhiwandi. It may also be mentioned here that Shri Nana Purohit, the leader of the P.S.P. in Kolaba, along with some youthful Congress workers remonstrated with the mob when it tried to set fire to the house of a Muslim named Umarkhan Chichkar near his own house.

The house of the Muslim and incidentally the adjoining house of Shri Nana Purohit were thereby saved.”

The disturbances in the Kolaba District

94.22 Though the disturbances at Mahad were put down that very evening, they spread to other parts of Kolaba District, and 53 places in the Kolaba District, other than Mahad, were affected. The total number of casualties in Kolaba District were three, two of them Muslims who were killed in the disturbances and the third a Hindu who died in police firing. The total damage to property in the Kolaba District, including Mahad, in round figures was Rs. 21,000 in the case of Hindu properties and Rs. 6,45,000 in the case of Muslim properties (G.W. 11/47/3936 ; P.W. 97/55-57/3312).

Conclusions

94.23 The following facts have been established by the evidence, and the following conclusions reached by the Commission, on the points dealt with and discussed in this chapter:

- (1) The Mahad disturbances were started by the Hindu mobs and the first serious incident which took place was the arson to two Muslim dry fish godowns at Gadi Tal which was a Hindu locality. From there the disturbances spread to Tambat Alli, Sarekar Alli, Kajalpura and Bazar Peth. In retaliation for the arson to and the looting of their properties the Muslims collected in mobs and attacked the Hindus.
- (2) The available police force at Mahad was inadequate to deal with a riot of this magnitude.
- (3) The disturbances were quelled as a result of the courage and firmness shown by C.P.I., P. R. Saluke (P.W. 105) in dealing with them. But for this, the disturbances would have assumed much greater proportions and would have resulted in much greater loss of life and damage to property.
- (4) False entries have been made by Head Constable Yadav (Buckle No. 769) (P.W. 118) in the station diary of the Mahad Town Police Station to provide an alibi to four local Shiv Sena leaders, namely, Anant Ramchandra Pawar, Madhukar Sitaram Pawar, the Mahad Shahar Shakhapramukh of the Shiv Sena, Dagdu Babu Parte, the Mahad Taluka Shakhapramukh of the Shiv Sena, and Dnyaneshwar Sakharam Patekar.
- (5) The police bandobast after the disturbances were put down was adequate and effective and prevented the recurrence of the disturbances.

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CHAPTER 95
THE TOLL OF THE MAHAD DISTURBANCES

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95.1 Casualties.

95.6 Loss of property.

95.9 Whether the fires to the Hindu properties were accidental ?

CHAPTER 95

THE TOLL OF THE MAHAD DISTURBANCES

Casualties

95.1 S.P., Khan has filed statements (Exs. P 1141 to 1143) giving the number of persons who were injured during the disturbances which took place at Mahad on May 8, 1970 and the nature of the injuries suffered by them. The correctness of these statements has not been challenged. These statements showed that in the said disturbances, 6 Muslims, 9 Hindus, a police officer and 2 police constables were injured.

95.2 Out of the said 6 Muslims, one had received a bullet injury in the police firing, another had a burn injury, the third a contused lacerated wound, the fourth an incised wound, the fifth an incised wound as also a contused lacerated wound, while the sixth complained of pain. These six Muslims were made accused in C.R. No. 56/70 (Ex. P 1104).

95.3 Out of the said 9 Hindus injured in the disturbances, four had received bullet injuries in the police firing, three had received incised wounds and the remaining two had contused lacerated wounds. They were all made accused in C.R. No. 55/70 (Ex. P 1103).

95.4 The police officer injured in the disturbances was C.P.I., Saluke. He had received an abraded contused wound as a result of being hit with a stone. The two constables who were injured were H. S. Bhoir (Buckle No. 1142) who had received a superficial cut and R. M. Bhoir (Buckle No. 1179) who had an abrasion.

95.5 No life was lost either in the police firings or in the disturbances.

Loss of property

95.6 S.P., Khan has filed before the Commission statements (Exs. P 1139 and P 1140) giving particulars of properties which were set on fire or looted in the course of the Mahad disturbances. The correctness of the said statements has not been challenged by any of the parties. The position as revealed by the said statements is that the estimated loss caused to Muslims by arson was Rs. 2,57,000, comprising of arson to two dry fish godowns and a blacksmith's shop at Gadi Tal, the cattle sheds and haystack of Ebrahim Tayyabkhan Chichkar and the house of Abdul Kadir Kunke in Kharkand Mohalla. Four shops and a hotel belonging to Muslims situate in Bazaar Peth were broken open and looted, the estimated loss being Rs. 25,300. In addition to this, some minor damage aggregating to Rs. 193 was caused to a Muslim

house in Kajalpura and two Muslim houses in the Muslim Mohalla and to the "kud" wall of a Muslim house in Kajalpura.

95.7 The estimated loss to Hindu properties caused by arson was about Rs. 16,900. It consisted of loss caused as the result of an attempt to set fire to two Hindu houses in Gandhari Galli in Kajalpura; arson to the clothes and the looting of property from two Hindu houses in the Muslim "mohalla" of Kajalpura and the burning of clothes and photo-frames of the pictures of Hindu Gods on the verandah of a Hindu house in the same "mohalla". In the arson committed by Hindus to the dry fish godowns at Gadi Tal, belonging to the Muslims, a shop-cum-residential house belonging to a Hindu and a boarding house, also belonging to a Hindu, which had thatched roofs and were in very close proximity to these godowns, caught fire and were burnt down. Similarly, a Hindu woman, Muktabai Shadge, who was a tenant in the house of Abdul Kadir Kunke, suffered loss in the arson committed by the Hindus to Kunke's house. In the Muslim mohalla of Kajalpura, some Muslims entered two Hindu houses and looted some utensils; the estimated loss being Rs. 400. Minor damage aggregating to Rs. 270 was caused by stone-throwing to three other Hindu houses in Kajalpura and one Hindu house at Gandhari Naka.

95.8 The following table set out communitywise the break-up of the loss of property and the manner in which such loss was caused:—

Cause of loss	Hindus	Muslims	Total
Arson	16,900	2,57,000	2,73,900
Looting	400	25,300	25,700
Other damage	270	193	463
Total	17,570	2,82,493	3,00,063

Whether the fires to the Hindu properties were accidental?

95.9 Savant has stated in his affidavit that the fire to the Hindu houses and shops was accidental as they were situate close to the Muslim shops and houses which were set on fire by the Hindu rioters, while the fire to the Muslim shops and houses was deliberate and was set by the Hindu rioters in order to take revenge [C.W. 29/1(31)/3252(29-30)]. Local inspection taken by the Commission substantially bore out what Savant had stated about the fire to the Hindu properties being mostly accidental, for it showed that most of the Hindu properties burnt down in the disturbances adjoined Muslim properties which had been set on fire during the disturbances.

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CHAPTER 96
THE POLICE FIRINGS AT MAHAD

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- 96.2 Whether the police firings were justified ?
- 96.4 C.P.I., Saluke's reward.

CHAPTER 96

THE POLICE FIRINGS AT MAHAD

The details of police firings

96.1 At Mahad the Police opened fire on two occasions, both times at Kajalpura, and in all seven rounds of .455 revolver and one round of .410 musket were fired. The first police firing took place on a Hindu mob and the fire was opened personally by C.P.I., Saluke who fired four rounds from his .455 revolver, injuring four Hindu rioters. The second police firing took place on a Muslim mob and three rounds were fired by C.P.I., Saluke from his .455 revolver and one round by A.H.C., Kashinath Aba Shirke, Buckle No. 38 (P.W. 103) from his .410 musket under the orders of C.P.I., Saluke. In this police firing one Muslim was injured.

Whether the police firings were justified ?

96.2 The available police strength at Mahad was inadequate to deal with a major riot. C.P.I., Saluke had only a handful of men with him with which to put down the disturbances and it speaks greatly to his credit that he should have succeeded within so short a time in doing so. The reason for this was his firm and courageous handling of the situation and his opening fire twice in rapid succession when the situation took a turn for the worse. The police firings on both these occasions were justified and but for them, the loss of life and damage to property would have been much greater.

96.3 The police firings at Mahad were all the more creditable since out of the total number of eight rounds, seven were fired from a .455 revolver of which, as deposed by Addl. I.G.P., Modak, the effective stopping range is only about 20 yards (G.W. 3/106/211), and even then five rioters were injured. These effective police firings made the rioters realize that the Police meant business and the disturbances died out. Had the same firmness and promptitude been shown in dealing with the disturbances at Jalgaon, the history of the Jalgaon disturbances would have been very different.

C.P.I., Saluke's reward

96.4 In appreciation of the services rendered by him at the time of the Mahad disturbances C.P.I., Saluke was given a cash reward of Rs. 250 and a commendatory note. Compared to the rewards given to some of the constables who were concerned with the Bhiwandi disturbances, particularly H.C., F. N. Mulani who received a reward of Rs. 1,000 and P.Cs., S. T. Shirsat, W. G. Kudalkar, D. T. Deshmukh

and R. D. Saluke who each received a cash reward of Rs. 250 for opening fire at Gaibi Nagar, which firing has been held by this Commission to be not justified, the reward to Saluke, who on his own initiative, with just a handful of constables to assist him, succeeded in putting down the disturbances at Mahad within such a short span of time, strikes one as being paltry and inadequate.

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CHAPTER 97
THE RIOT CASES

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- 97.1 The investigation of riot cases.
- 97.2 The case diaries.
- 97.3 The attempt to supply an alibi.
- 97.5 Prosecutions.
- 97.6 Preventive detention.

CHAPTER 97

THE RIOT CASES

The investigation of riot cases

97.1 Prior to the Special Investigation Squad taking over the investigation of the riot cases, P.S.I., C. R. Salvi of the Local Crime Branch, Alibag, was investigating the riot cases filed in respect of the offences committed during the Mahad disturbances. After the Special Investigation Squad, Bhiwandi, was set up, Dy. S.P., Saraf was in charge of the supervision of the cases both in the Thana and the Kolaba Districts. The actual field-work of investigation of riot cases in Mahad was in charge of D.S.I., G. V. Kulkarni from May 29, 1970 to June 25, 1970.

The case diaries

97.2 So far as the Special Investigation Squad was concerned, Mahad was no exception and, as in the case of Bhiwandi and Jalgaon, copies of all the case diaries were not submitted. Ultimately, when the office of the D.I.G. (Crime) woke up to this fact, by the letter dated October 16, 1971 (Ex. 1253) from the D.I.G. (Crime) it was pointed out to Dy. S.P., Saraf that copies of the Case Diaries Nos. 1 to 17 in C.R. No. 55/70 (Ex. P 1103), the case against 44 Hindus, and of the Case Diaries Nos. 1 to 17 in C.R. No. 56/70 (Ex. P 1104), the case against 24 Muslims, had not been submitted to the office of the D.I.G. (Crime). Copies of the said Case Diaries were submitted only thereafter.

The attempt to supply an alibi

97.3 According to entries Nos. 22 and 23 in the station diary for May 8, 1970 of the Mahad Town Police Station (Ex. P 1189), Anant alias Anna Ramchandra Pawar, Madhukar Sitaram Pawar, the Mahad Shahar Shakhapramukh of the Shiv Sena, Dagdu Babu Parte, the Mahad Taluka Shakhapramukh of the Shiv Sena and Dnyaneshwar Sakharam Patekar, a Shiv Sena worker, were at the police station from 2-15 p.m. to 3-45 p.m. and the said entry No. 22 mentions that Jamadar Sathe was present when the talk alleged to have taken place between them and Head Constable Yadav took place. Saluke has stated that entries of this nature are not made in station diaries (P.W. 105/8/3423), though no evidence is necessary for a proposition so obvious. Even H.C., Yadav himself admitted in the witness-box that he had not made a similar entry at any other time (P.W. 113/6/3946). According to the affidavits of Madhukar Pawar and Dagdu Parte (affidavits

Nos. 393 and 392), they along with Anna Pawar and Dnyaneshwar Patekar had gone to the police station to make a complaint about the removal of the flag from the disputed structure by some Muslims. H.C., Yadav's evidence is to the same effect. Entry No. 22, however, does not bear this out, but merely mentions that they had come to make "inquiries about the flag on the Mahikavati". Yadav has given contradictory answers about Jamadar Sathe's movements. According to the answer first given in evidence by Yadav, he had sent Constable Pardhi to call C.P.I., Saluke, Jamadar Sathe and other policemen from their respective residences for the purpose of bandobast in Deshmukh Mohalla and Pansare Mohalla on receiving a telephone call from Gandhari Naka about the trouble in the said two "mohallas". He then sought to make out that before going to Gandhari Naka, Sathe had first come to the police station. According to his police statement, Sathe was at the police station when the said telephone call was received and Yadav had sent him for bandobast to the said two "mohallas". Yadav has deposed that he did not know who these four persons were except that they were residents of Mahad. None the less, he made the said entry and the explanation given by him for doing so was that he did so "lest they might make allegations against me for not having taken down their complaint". Though he had deposed that he did not know who these persons were, his signed statement dated June 26, 1970 (Ex. P 1533) referred to them as belonging to the Shiv Sena and as being "social and political leaders". He tried to explain this away by saying that it was Jamadar Sathe who had given him this information. The strangest thing about these two entries, however, is the wording of entry No. 23. The said entry states that 3-45 p.m. the said persons "went back to their respective houses". There would have been something to be said about Yadav's explanation had the said entry merely mentioned that these four persons left the police station. But to say that they went back to "their respective houses" could be for no other reason than to make out that at the time when the various incidents were taking place at Mahad in the course of the disturbances, they were till 3-45 p.m. at the police station and thereafter at their homes. In the witness-box Yadav, was forced to admit that the time mentioned in the said entry No. 23 was written in a hurry and might not be correct and might be more or less by 10 to 15 minutes than the actual time. It was in the Hindu mob at Sarekar Lane which was indulging in arson that, according to C.P.I., Saluke, he saw these four persons at about 3-15 p.m. According to Saluke, when he went at about 2-30 p.m. to the police station from the disputed structure, he found the said four persons sitting in the police station. Dagdu Parte told him that the Shiv Sena flag had been removed and they wanted to see the place. Saluke replied that the flag was in its place and they need not go there. Thereafter at about 2-50 p.m. the telephone call was received about the arson to the two dry fish godowns at Gadi Tal and about five minutes thereafter the said four persons left the police station and thereafter Saluke rushed to Gadi Tal with

a police party [P.W. 105/1(9-10)/3418(3), 6/3421]. Strange to say, Yadav has not entered the said call in the station diary.

97.4 The only conclusion that can be drawn is that the said entries Nos. 22 and 23 were made by Head Constable Yadav deliberately with the intention of providing an alibi to the said four Shiv Sena leaders, Anant Pawar, Madhukar Pawar, Dagdu Parte and Dnyaneshwar Patekar, who were accused of having committed offences during the disturbances.

Prosecutions

97.5 In all, 99 criminal cases were registered in respect of the offences committed in the Kolaba District in the course of the disturbances (G.W. 11/47/3936). Out of these, four cases were in connection with the offences committed at Mahad, namely, C.R. No. 54/70 (Ex. P 1102) against the two Muslims who were alleged to have removed the flag from the disputed structure, C.R. No. 55/70 (Ex. P 1103) against 44 Hindus, C.R. No. 56/70 (Ex. P 1104) against 24 Muslims, and C.R. No. 57/70 (Ex. P 1113) against 8 Hindus. The two Muslim accused in C.R. No. 54/70 were acquitted in Criminal Case No. 426 of 1970 by the Judicial Magistrate, First Class, Mahad, by his judgment and order dated January 30, 1971 (Ex. P 1112). C.R. No. 55/70 was split up into two cases, namely, Sessions Case No. 11 of 1971 against 39 Hindus and Sessions Case No. 13 of 1971 against 5 Hindus. All the accused in both these cases were acquitted by the Sessions Judge, Kolaba. The appeal of the Government against the order of acquittal in Sessions Case No. 13 of 1971 was not admitted by the High Court, while the appeal against the order of acquittal in Sessions Case No. 11 of 1971 was admitted, being Criminal Appeal No. 1243 of 1971, and at the hearing of the said appeal the order of acquittal was confirmed. Out of the 24 Muslim accused in C.R. No. 56/70, 23 were acquitted and one was convicted under section 324, I.P.C. and sentenced to pay a fine of Rs. 500 and in default to suffer rigorous imprisonment for one month, by the Sessions Judge, Kolaba, in Sessions Case No. 12 of 1971. The Government appealed against the acquittal of 12 out of these 23 accused. The said appeal was not admitted by the High Court. All the Hindus who were accused in C.R. No. 55/70 were acquitted by the Judicial Magistrate, First Class, Mahad, in Criminal Case No. 425 of 1970 (P.W. 97/28/3237-8).

Preventive detention

97.6 Three persons, namely, Ramesh Shankar Deshmukh, Bhaskar Santaji Sule *alias* Bhai Sule and Khalil Kazi, the Assistant Editor of the 'Maharashtra Muslim', were on the recommendation of S.P., Khan ordered by the D.M., Kolaba, to be detained under section 3(I)(i) of the Maharashtra Detention Act, 1970. The cases of Ramesh Shankar Deshmukh and Bhaskar Santaji Sule have already been dealt with in Chapter 89 (paragraphs 89.8 to 89.9).

97.7 The order of detention against Khalil Kazi was made on May 14, 1970 and on the same day the grounds of detention were furnished to him. By an order dated May 25, 1970 made under section 3 (3) of the said Act, the Government of Maharashtra approved his detention. The grounds of detention (Ex. P 1135) mentioned *inter alia* that Khalil Kazi was spreading false rumours, attempting to foment communal tension between the Hindus and the Muslims and was inciting the Muslims to take the law in their own hands by uniting and rising against the Hindus and was moving about in the areas of Mahad and Goregaon with a view to incite the Muslims to resort to violence and that immediately after the disturbances had broken out at Mahad on May 8, 1970, he had visited Mahad and addressed in a provocative manner a meeting of the Muslims and had on the telephone given false information on May 8, 1970 about Hindu mobs gathering at different places in the District, and that on May 9, 1970, accompanied by Dr. Mrs. Kazi, he had called on the S.P. and had cast aspersions on the Police alleging that the Police were partial in the investigation of riot cases and were against the Muslims and had given an ultimatum that as the Muslims had lost faith in the Police, they would have to take care of themselves. In accordance with the opinion of the Advisory Board given on July 26, 1970, the Government of Maharashtra, in the exercise of its power under section 12 (2) of the said Act, revoked the said order of detention on August 1, 1970 (P.W. 98/13/3249-50).

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CHAPTER 98
RELIEF AND REHABILITATION

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- 98.4 Relief and rehabilitation measures.

CHAPTER 98

RELIEF AND REHABILITATION

Measures to restore confidence

98.1 D.M., Savanur who was camping at Goregaon, left in the evening of May 7, 1970 for Bombay to attend a conference of Collectors which was to take place on May 8, 1970. After attending the said conference on May 8, 1970, he returned to Alibag the same night at about 9.30 p.m. He then learnt that the Addl. D.M. had left for Mahad on account of the disturbances which had broken out there. Savanur immediately contacted him on the telephone and was informed that the disturbances had been put down and that it was, therefore, not necessary for him to proceed to Mahad that night. Accordingly, Savanur left for Mahad the next day, that is, on May 9, 1970 and reached Mahad at about 10 a.m. He immediately placed a sum of Rs. 5,000 at the disposal of his subordinates for distributing gratuitous relief and gave necessary instructions in that behalf. He also called a joint meeting of the leaders of both the communities to form a Peace Committee. The meeting was held at 5 p.m. that evening and it was adjourned thereafter to 5 p.m. on May 10, 1970 [P.W. 98/1(34)/2943(11)].

98.2 S. B. Savant was in Bombay on May 8, 1970. In the night of May 8, 1970 his son apprised him by a lightning trunk call about the disturbances. Savant thereupon hurried to Mahad on May 9, 1970 [C.W. 29/1(32)/3252(30)]. He attended the said meeting called by the D.M. The only distinctive feature of this meeting was a wrangle which took place between S. B. Savant and Surba Tipnis about their respective seating positions. In fact, it appears that the said meeting had to be adjourned because of this wrangle. S.P., Khan was sitting on the D.M.'s right and the wrangle was about who should sit on his left (P.W. 97/51/3311). Tipnis himself has stated [C.W. 47/1(28)/3965(18)]:

“The special treatment given to Shri Savant by the Prant Officer was objectionable to me and I protested against the same. There was some wordy affair between myself and Mr. Savant and the meeting dispersed.”

It was unfortunate that when officials were endeavouring to restore peace and normalcy in a town which had been subjected to communal disturbances and for this purpose were seeking the help of local leaders, a veteran local leader should have been so concerned with the treatment given to his opponent, rather than with the urgent problems for consideration by the meeting, that the meeting had to be adjourned without doing any work.

98.3 At midnight on May 9, 1970, the then Minister of State for Education, Law and Judiciary, Mr. A. R. Antulay, arrived at Mahad and discussed the situation with the D.M., the S.P. and the S.D.M. The next morning he held separate meeting with the Hindu and Muslim leaders and exhorted them to maintain communal harmony. He also went round the affected areas along with the D.M. and the S.P. and attended the adjourned joint meeting of the leaders of the two communities held in the Municipal Hall at 5 p.m. At this adjourned meeting a Peace Committee was formed [98/1(35)/3243(12), 1(37)/3243(12)].

Relief and rehabilitation measures

98.4 The Addl. D.M.; arrived at Mahad at about 8-30 p.m. on May 8, 1970. After going round the town with the S.D.M. and the Taluka Executive Magistrate, he issued instructions to the Taluka Executive Magistrate, Attarde, to get the damage to property assessed in order that relief could immediately be given to those who had suffered in the disturbances and asked Attarde to take the help of the Additional Mamlatdar for this purpose [P.W. 104/1(5)/3378(2)]. When the D.M. arrived at Mahad on May 9, 1970 at about 10 a.m., he immediately placed a sum of Rs. 5,000 at the disposal of his subordinates for distributing immediate gratuitous relief. The letter dated April 7, 1972 (Ex. P 1174) from the D.M. to the S.P., Kolaba, shows that a sum of Rs. 1,585 was disbursed by way of immediate relief and Rs. 1,608 was given by way of subsidy and Rs. 49,700 by way of loans for business.

98.5 There is no complaint made before the Commission that there was any default or tardiness in the work of relief and rehabilitation carried out at Mahad or that any discrimination or communal bias was shown in granting immediate relief or subsidies or loans.

98.6 The following table shows community-wise the break-up of the amounts spent for relief and rehabilitation:—

Nature of relief		Hindus	Muslims	Total
Subsidy	1,015	593	1,608
Immediate relief	1,340	245	1,585
Loan for business	700	49,000	49,700
Total		3,055	49,838	52,893

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CHAPTER 99
FINDINGS — THE MAHAD INQUIRY

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CHAPTER 99

FINDINGS — THE MAHAD INQUIRY

Prefatory observations

99.1 A large number of questions have fallen to be decided in the course of the Inquiry into the Mahad disturbances. The Commission's findings on these matters have been set out in the relevant chapters. It is, however, necessary to set out in a separate chapter the findings of the Commission on the Terms of Reference in respect of the Mahad disturbances in the order in which they are contained in the notification appointing the Commission.

The causes of the Mahad disturbances

99.2 Under the first part of clause (a) of the Terms of Reference the Commission is required to inquire into and report on the causes of the communal disturbances which occurred within the limits of the Mahad Municipal Council on May 8, 1970.

99.3 Like all communal disturbances the causes of the communal disturbances which occurred at Mahad were two-fold, a basic or underlying cause and an immediate or proximate cause.

99.4 The basic or underlying cause of the Mahad disturbances was the same as the basic or underlying cause of all communal disturbances, namely, communal tension. The causes of the communal tension in Mahad were:

- (1) the speech made by the Shiv Sena Chief, Bal Thackeray, on November 2, 1969 on the Chowpatty sands at Bombay, that he would visit Mahad and break a coconut at the disputed structure,
- (2) the activities carried on by the Mahad Branch of the Shiv Sena,
- (3) the visit of Bal Thackeray on January 17, 1970 in the course of which he went up to the disputed structure, broke a coconut; and 'gulal' was sprinkled and a flag hoisted on the disputed structure,
- (4) the public meetings of the Hindus held in the Veereshwar Temple on January 23, 1970 and January 30, 1970 respectively at which it was decided to construct a new temple on the disputed property,
- (5) the formation of the Temple Committee to collect funds for the construction of a new temple on the disputed property,
- (6) the visit of the Shiv Sena leaders and workers to Mahad on February 22, 1970,

- (7) the agitation carried on by some Muslims for the return of the disputed property by the Government to the Muslims after a letter of surrender dated February 19, 1970 was handed over to the Chief Minister by the Muslim leaders authorized by the Muslim Jamaat,
- (8) the social boycott of the Muslims in certain talukas of the Kolaba District, including Roha, Mhasala and Mangaon, which was also put into effect against some Muslims of Mahad, and
- (9) the communal riot which took place at Goregaon on May 6, 1970.

99.5 The immediate or proximate cause of the Mahad disturbances was two-fold, namely:—

- (1) the impact on the Hindus of Mahad of the news of the Bhiwandi disturbances, and
- (2) the circulation of a false rumour that two Muslims had removed the flag from the disputed structure after assaulting a police constable on duty there.

The course of the Mahad disturbances

99.6 Under the second part of clause (a) of the Terms of Reference the Commission has to inquire into and report on the communal disturbances which occurred within the limits of the Mahad Municipal Council on May 8, 1970.

99.7 The false rumour about the removal of the flag from the disputed structure by some Muslims after assaulting a police constable on duty there spread in no time all over the town and crowds started collecting. The first serious trouble took place in Gadital where two dry fish godowns belonging to Muslims were burnt down. The disturbances spread from Gadital to Tambat Alli, Sarekar Lane, Bazar Peth, Kajalpura and Salvad Naka. The Hindus were the aggressors in these communal disturbances, while the Muslims sought to protect themselves and to retaliate.

99.8 No life was lost in the Mahad disturbances. In all, six Muslims and nine Hindus were injured in the said disturbances. Out of the said nine Hindus four had received bullet injuries in the police firing. The total loss of property was Rs. 2,82,493 in the case of Muslim properties and Rs. 17,570 in the case of Hindu properties. Out of these, Muslim properties of the value of Rs. 2,57,000 were set on fire, Muslim properties of the value of Rs. 25,300 were looted and the other damage to Muslim properties amounted to Rs. 193. In the case of Hindu properties, the damage by fire was Rs. 16,900, the damage by looting was Rs. 400 and the loss by other damage was Rs. 270. The Hindu properties mostly caught fire from the Muslim properties which had been set on fire during the disturbances.

The adequacy of preventive measures

99.9 Under the first part of clause (b) of the Terms of Reference the Commission has to inquire into and report on the adequacy of

administrative measures taken to prevent the communal disturbances which occurred within the limits of the Mahad Municipal Council on May 8, 1970.

99.10 Though in several matters the authorities acted promptly, adequately and efficaciously, the measures taken by them to prevent the said disturbances must be held to have been inadequate for the following reasons:—

- (1) The failure of the authorities to issue an order under section 144, Cr.P.C. prohibiting entry into the disputed property on the occasion of the visit of the Shiv Sena Chief, Bal Thackeray, to Mahad on January 17, 1970.
- (2) The delay in considering the grant of sanction to the prosecution under sections 153A and 295A, I.P.C. of the Shiv Sena Chief Bal Thackeray, and the other Shiv Sena leaders for the acts done by them on January 17, 1970.
- (3) The not granting of the sanction for the aforesaid prosecution of the Shiv Sena Chief, Bal Thackeray, and the other Shiv Sena leaders.
- (4) The failure of the authorities to take any steps in respect of the misuse of the Veereshwar Temple by the holding of public meetings of Hindus there for a communal purpose, namely, to carry on propaganda for the construction of a temple on the disputed property.
- (5) The modification on February 22, 1970 of the ban on the entry of the Shiv Sainiks into Mahad, imposed by the order dated February 15, 1970 under section 144, Cr. P. C. ; and thereby permitting the Shiv Sainiks to enter Mahad from the eastern approach and to hold a public meeting there.
- (6) The failure of the authorities to check the permits of goods trucks which carried Shiv Sainiks to Mahad on January 17, 1970 and February 22, 1970 and to prevent the said trucks from carrying Shiv Sainiks in excess of the prescribed number of passengers in case no permit under the Motor Vehicles Act, 1939, for the said purpose had been obtained.
- (7) The failure of the authorities to remove the flag placed on the disputed structure in the night of January 20, 1970 by some local Shiv Sena workers.

The adequacy of measures to deal with the Mahad disturbances

99.11 Under the second part of clause (b) of the Terms of Reference the Commission has to inquire into and report on the adequacy of the administrative measures taken to deal with the communal disturbances which occurred within the limits of the Mahad Municipal Council on May 8, 1970.

99.12 The measures taken to deal with the said disturbances were adequate and efficacious.

The responsibility for fomenting communal tension

99.13 Under the first part of clause (c) of the Terms of Reference the Commission has to inquire into and report on whether there is any organization or group within the limits of the Mahad Municipal Council or outside those limits which has fomented communal tension.

99.14 The organization operating in Mahad which has fomented communal tension therein was the Mahad Branch of the Shiv Sena. The organization from outside Mahad which has fomented communal tension in Mahad was the Shiv Sena.

99.15 In addition, certain individuals by their activities and speeches have fomented communal tension in Mahad. They are:

- (1) the local P.S.P., Jan Sangh and Congress leaders and workers who participated and joined in the agitation for the construction of a temple on the disputed property, and
- (2) the local Muslim leaders who agitated for the return of the disputed property to the Muslims of Mahad after the Muslim Jamaat, Mahad, had handed over a letter of surrender in respect of the said property to the Government.

The responsibility for provoking the Mahad disturbances

99.16 Under the second part of clause (c) of the Terms of Reference the Commission has to inquire into and report on whether there is any organization or group within the limits of the Mahad Municipal Council or outside the said limits which has directly or indirectly provoked the Mahad disturbances.

99.17 No organization or group either operating within Mahad or outside Mahad has provoked the said disturbances. The said disturbances were directly provoked by:

- (1) the persons who fabricated the false rumour that the flag on the disputed structure was removed by some Muslims after assaulting a police constable on duty there, and
- (2) the persons who spread the said false rumour, including those local Shiv Sena leaders and workers who did so.

Whether the police firings were justified ?

99.18 Under clause (d) of the Terms of Reference the Commission has to inquire into and report on whether the firings by the Police within the limits of the Mahad Municipal Council were justified or not.

99.19 The Police opened fire at Mahad on two occasions. In all, seven rounds of .455 revolver were fired by C.P.I., P. R. Saluke and one round of .410 musket by A.H.C., Kashinath Abba Shirke (Buckle No. 38) under the orders of C.P.I., Saluke. Both the said police firings were justified and resulted in putting down the disturbances.

Germane matters

99.20 Under clause (e) of the Terms of Reference the Commission has to inquire into and report on such other matters as may be germane

to the other Terms of Reference. The germane matters which have been inquired into by the Commission in the course of the Mahad Inquiry are:

- (1) the work of relief and rehabilitation, and
- (2) the recommendations to be made to the Government for preventing and dealing with similar disturbances in the future.

The work of relief and rehabilitation

99.21 The authorities took immediate steps to alleviate the sufferings of the victims of the disturbances. The measures taken by them for granting relief to those who had suffered in the disturbances and for rehabilitating them were immediate, efficacious, adequate and generous.

Recommendations

99.22 A number of matters which have come to light in the course of the Inquiry into the disturbances give rise to reflection. In respect of these matters a solution has to be found so that they may not recur in the future. Certain suggestions in that behalf have been made by the Commission. They will, however, be dealt with separately in Part VII of the Report.

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