

:: RAM MANDIR CASE ::

MENTIONING BY MR. KAPIL SIBAL SR. ADVOCATE REGARDING CONTEMPT FILED BY MR. DHAWAN

Mr. Sibal stated that I am moving an application for Contempt.

CJI: It will be listed tomorrow.

One of the advocate appearing in Suit 4739 of 2011 sought permission to make submission for 2 minutes referring one of the party of Hindu Mahasabha

Permission granted by CJI.

He emphasized on word Invader and stated that Invader don't have any right. He stated that it is established that such demolition by invader can't be against the interest of Deity.

He quoted many phrase/judgment by referring international law. He read the United Nation declaration regarding international law.

ARGUMENT OF MR. RAJEEV DHAWAN (SR. ADVOCATE)

Mr. Rajeev Dhawan, Sr. Advocate appearing for Plaintiff in Suit No. 4 and defendant in other Suits commenced his argument by stating that today is 18th day of hearing in this case, on 18th day even Mahabharta stopped.

He stated that I would like to start my argument with apology, he said that he has not any intention to harm the decorum of the court and said apology to Mr. Mishra for distracting him.

He said that it is universally recognized that he is irritating.

SUBMISSIONS REGARDING SCHEDULE OF ADVOCATES

He disclosed his scheduled, as per their Schedule after argument of Mr. Dhawan, MR. Gilani, Sr. Advocate will come next, then he said that thereafter Ms. Meenakshi Arora will deal with ASI and then Mr. Pasha will deal with the argument of Mr. P.N. Mishra.

He also remind the court, that court has promised to accommodate him (for the rest of one day in a week) on which court said that you can have rest on Wednesday.

SUBMISSIONS BY MR. DHAWAN:

- Mr. Dhawan started to make his submission on the argument of Mr. Mishra, he said that Mr. Mishra argued regarding Regime change, and whether Darun Islam to be followed or not.
- Mr. Dhawan handed over a compilation volume on *English Law in India and Justice Equality and good conscience in Modern Indian Law.*
- He made his submissions that entire suit 5 was argued based upon History and Historians but the question is as to what extent we can rely on Historians.
- History is not about date and time.

He said that below are my fundamental questions:

“WHOM,

WHAT AND WHERE,

HOW AND WHEN,

HOW THEY LOST,

RELIEF

He made his submission on the question as what law could be applied, whether the Swyambhu can be dealt under article 142.

He argued that what is the law that your Lordship inherited. The present law which we follow is English law adopted by virtue of constitution, it's not 'Vadic Law'. Legal system started in India since 1858.

He submitted that can we place reliance on Vedas, Skandpuran, Historian. He said that Skandpuran is not an evidence.

He said that 'Parikarma' is not 'Ashwamegha Yagya', as you will get the land till where the horse reaches.

He argued that does a Parikarma doesn't entitle you to get the entire area, as per their case 'Parikarma' can be a form of worship but it's not an evidence.

Thereafter Mr. Dhawan took the court through the Laws which were in effect when the Nation was invented such as 'Diwani Adalat', 'Govt of India Act' etc.

Mr. Dhawan said the question before My Lord is as what Law should apply or should not apply.

Mr. Dhawan said that none of the party except Ranjeet Kumar referred to the facts of the case.

Mr. Dhawan also refers to certain submissions by K Parasaran. While stating that he respects him a lot and he is "as Your Lordships say Bhishma Pitamah, it is for Your Lordships to decide at the end whether he was on the right side or not", Dhawan.

Mr. Dhawan stated that do you want me to start from 1858 or do you want me to go back to 1528? asks Rajeev Dhawan. If Your Lordships want me to go back to 1528, I can show document after document to prove that a mosque existed.

Rajeev Dhawan argued on the law to be applied in the event of change of sovereign.

Mr. Dhawan Argued that as far as a title suit of civil nature is concerned; there is no room for historical claims.

Mr. Dhawan stated that Mahabhartta is "Itihass" and Ramayana is "Kavya"

He argued that Justice Agarwal of Allahabad HC decided to give his judgment on the basis of conjectures and preponderance of probabilities.

Mr. Dhawan argued that the entire secular structure of our Constitution will disappear if we try a balancing act between apples and oranges.

Mr. Dhawan argued that we are firmly of the view just because there was a Peacock or Lotus there does not mean there was a massive structure before the mosque.

The question formulated for Archeological Survey of India (ASI) was whether there was a temple which was demolished for construction of mosque.

Mr. Dhawan on argument by Hindu parties that travellers of that time did not mention about the mosque: "*Can negative inferences be made on that basis? Marco Polo did not mention about Great Wall of China*".

We cannot play amateur historians in this case.

Justice D.Y. Chandrachud: But you have also relied on historical submissions. It is something both sides have relied on.

Rajeev Dhawan: Your Lordship is right. What undercuts them undercuts me

Rajeev Dhawan: Once it is declared that a particular property is Waqf/ dedicated to Waqf, then ownership is transferred to Almighty.

Rajeev Dhawan read Sanskrit Sholaka and praised the beauty of Sanrkit language.

In 1934, it was damaged. In 1949, trespass was committed and in 1992 it was brought down. After all that, they say Hindu Right must be protected.

One of their arguments is that after 1950, their right became crystallized under Article 13; I should respond to it.

:: LUNCH ::

Mr. Dhawan relied on Constituent Assembly Debates on Preamble and secularism in Constitution of India and read the relevant portion of it.

Mr. Dhawan argued that I am citing Constituent Assembly Debates on secularism because such arguments as above should not have taken place before this court. The discussion over the proposed preamble and then stressed on the point that these proposed preambles have been discarded by the constituent assembly, so the basis on which Senior Adv. Jain has argued is not sustainable. The argument that secularism and everything other things stops and Hindu law carries on is wrong. A claim was made on my rights only after the year 1935.

Justice Bodbe: The argument of other party was on the basis of the question that whether it is a valid mosque or temple and how does that affect the character of the structure. So the argument of the opposite party taking help of various personal law has been forwarded on that aspect.

Mr. Rajeev Dhawan: No, they have made a case that this is an issue involving invaders Vs native so the in the light of argument that custom and other personal laws are also law under the Art. 13 of the constitution cannot be used to defeat the purpose of secularism. Tab 3 of the compilation dealt with various judgment quotes on secularism.

RES-NULLIUS

Mr. Rajeev Dhawan argued as whether the site is 'res nullius'. Mr. Dhawan handed over compilation of the argument. He has tried to differentiate and elucidate the exact interpretation of the res nulluis in his favour negating the interpretation understood by the Senior Adv. Parasharan. Then he referred the dictionary meaning of 'res nullius' and 'terra nulluis'.

Mr. Rajeev Dhawan placed a judgment of Australia dealing with the land rights of the aboriginals, where Britishers took the land on the ground that it belongs to nobody but ultimately court has held that the land/property was not res nulluis and it all belongs to the aboriginal *Mabo vs. Queensland:1992 (HCA) 23*), whereby at Page no 41 the definition/interpretation of res nulluis was given.

Mr. Dhawan referred para 16 of Thairamma Case, (2005) 1 SCC 457 at Page 145 of the compilation that land already belongs to the deity. Their entire argument of res nulluis is based upon the premise that the place belongs to the deity. Then at Page no 139 of the compilation 1888 (ILR) 11 MAD 145. He has made an argument that cows roaming free and wild animals are also res nulluis.

Mr. Dhawan referred page no. 144 of the compilation in Mukund Ram Case:1951 SCC online All 123, he read para 30, 32 of the judgment to negate the argument

that after the Awadh Act, and assimilation of Oudh with the British empire entire land belonged to British as being res nullius is not sustainable.

REFERRED TWO OF HIS OWN ARTICLE ON DHARAMSHAstra AND MODERN ANGLO HINDU LAW

Thereafter, Mr. Rajeev Dhawan referred two of his article written on Dharmashastra and modern anglo-Hindu law over the subject published by the ILI law journal.

P.V. KANE : HISTORY OF DHARAMSHAstra (ANOTHER COMPILATION)

He has referred to another compilation of P.V Kane: History of Dharamshastras.

He has deliberated upon the meaning of word 'ownership' and the concept of property in ancient Hindu Law/Dharamshastras.

At this point question has been raised by the bench about the nature of property of '*Sheibaitship*'. In reply to this RD has contended that they are arguing over this very point that Hindus have very wide definition/concept of ownership.

Mr. Dhawan refereed Page no. 2 of the P. V. Kane compilation to distinguish 'Itihaas' and 'history' and argued that on the basis of various version and stories available of Mahabharata it may be considered as 'Itihaas' but Ramayana is predominantly in form of 'kavya' and not 'Itihaas'.

Thereafter Mr. Dhawan referred to Page no. 4 and argued that Grammar is the foundation of any language and the entire grammatical structure of Sanskrit language is based on the work of Panini and Patanjali, which nowhere discusses about Ram. Quoting Page no 7, 13 RD has further argued that Panini does not mention Dasharath, Lakshaman and others in his Mahabhasya. Then he referred to 2nd para of Page no 26 dealing with concept of 'Pratishtha' and 'Utsarg'. After reading the Dharamashastra concept of 'Pratistha' and 'Utsarg' he has made an argument that it has nothing to do with 'Swambhu', property has to be dedicated in the name of God.

Mr. Dhawan made an argument that sources of Hindu law has sanctity under Art 13(3) and it has to be based on '*Sadachara*'.

COMPILATION OF 'BOOK OF B. K MUKHERJEA'

Thereafter Mr. Dhawa handed over another compilation from the extracts of the book of B. K Mukherjea. Referring to Page no 11 he has made an argument

against the assertion that Hindus were observing worship/faith since time immemorial.

There was no temple worship in the religion of 'Veda' and no idol worship was there referring to pure Vedic practice by the Arya Samaj.

Mr. Dhawan argued that there is no mention of monastic institution in Vedas. The crux of his argument is that the submission that Hindus were observing Puja at the place since time immemorial is wrong and there is need to give a cap on this duration.

Mr. Dhawan referred para 1.19, 1.26 about when idol worship started in India.

Justice Chandrachud indicated to Page no 19 that it is in "Gupta period" where resurgence/practice of idol worship starts.

Mr. Dhawan argued on the point as to whom the property vests. 'Swambhu' God or 'Shebait's'? He argued that 'Swambhu' has no specific right about the ownership of property (At Page No. 20 para 1.47).

Mr. Dhawan argued that temple is not a juristic person but deity is a juristic person. He made an argument that deity owns property only in the secondary sense and the primary right belongs to 'Shebaitship'. (Page 28 para 1.48 and 1.51)

Dhawan referred to Angorbala vs. Devrata Case and pointed out the interpretation given by Jain of 'Shebaitship' is correct and adopts his argument on the legal points about the nature of 'Shebaitship'. (Page 46)

Mr. Dhawan indicated towards the argument that Hindu idol is not a perpetual minor and idol doesn't enjoy any special right under the limitation act. (Page 82 para 6.15)

Then he referred, about the right of suit for person other than the 'Shebait's'-private trust. (Page 86)

Mr. Dhawan argued that you (Deity) have to answer through the 'Shebait's'. The only argument on the limitation that you are a minor is not maintainable. He read the portion which deals with rights of other person and suits by worshippers. (At Page 87-88 para 6.19 and 6.22)

Mr. Dhawan made an argument that Deity is not a necessary party to all suits related to debutter. (Page 95)

'PARENS PATRIAE'

Thereafter he handed over another compilation on the argument based on 'Parens Patriae'. He referred Chand Lal Sahu (1990) 1 SCC 613, where at Page 35 the principal of "Parens Patriae" has been explained. Then he referred another judgement of 2011 as mention in the index of the compilation at Page 185 para 26.

He referred to another judgement of 2019 from his compilation from para no 17 to 19.

Mr. Dhawan argued that no temple or monastic institution existed during Vedic age; there was no idol worship during Vedic times, view is that these institutions came into existence during Buddhist period; but difficult to say exactly when idol worship started.

:: Hearing resumed will begin tomorrow::

**Notes Prepared by:
Amit Sharma, Advocate**