

**::RAM MANDIR CASE::**

**CONTEMPT PETITION FILED BY MR. RAJEEV DHAWAN REPRESENTED BY MR. KAPIL SIBAL SR. ADVOCATE**

Contempt petition was listed as item no 501 (as 1<sup>st</sup> item) in which Mr. Kapil Sibal, Sr. Advocate was representing Mr. Rajeev Dhawan.

Before Mr. Sibal could utter a single word CJI directed to 'Issue Notice' and returnable in two weeks, meaning thereby that the said contempt petition will be listed before court after two week.

Mr. Sibal returned without stating anything.

**ARGUMENTS MADE BY MR. RAJEEV DHAWAN (SR. ADVOCATE)**

**THE PLACE OF WORSHIP SPECIAL PROVISION ACT 1991**

Mr. Rajeev Dhawan, Sr. Advocate appearing for Plaintiff in Suit No. 4 (Muslims) commenced his argument by referring MAP of disputed place. Mr. Dhawan thereafter referred an 'Act' namely 'The Place of Worship Special Provision Act 1991' and particularly referred section 3, 4 and 5 of the said act.

Section 3 & 4 of said act are as follows:

*3. Bar of conversion of places of worship.—No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.*

*4. Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc.—(1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.*

*5. Act not to apply to Ram Janma Bhumi-Babri Masjid.—Nothing contained in this Act shall apply to the place or place of worship commonly known as Ram Janma Bhumi-Babri Masjid situated in Ayodhya in the State of Uttar Pradesh and to any suit, appeal or other proceeding relating to the said place or place of worship.*

Mr. Rajeev Dhawan, Sr. Advocate strongly relied upon the conclusion of J. Sharma from impugned order the conclusion is as follows:

Place of worship act does not debar those cases where declaration is sought for a period prior to the Act came into force or for enforcement of right which was recognized before coming into force of the Act.

Mr. Dhawan stated that judgment in the matter of Ismile Farooqui and section 5 of the "Place of worship special provision act 1991", preserves the jurisdiction of this Hon'ble Court.

### **PHOTOGRAPHS, REPORTS AND LIST OF DATES OF INCIDENTS IN 1949**

Mr. Dhawan referred certain photographs referred by Hindus during their arguments and indicated photographs no. 127, 128 and 129 stated that these photographs are from report of 1990.

Mr. Dhawan in his typical style stated while arguing that Show can't go on like that, no more Rath Yatras.

Mr. Dhawan referred the report of K.K. Nair, Deputy Commissioner Faizabad.

Mr. Dhawan argued that the Status Quo order of court was violated in total on 06.12.1992.

Mr. Dhawan read over the evidence of DW3/1 on page 8771 indicating that K.K. Nair was Deputy commissioner Faizabad and Mr. Gurudutt Singh was City Magistrate , K.K. Nair resigned in 1950 and contested Lok Sabha election.

He argued that K.K. Nair was popular amongst Hindus so by arguing such material Mr. Dhawan tried to demolish the reliability of Mr. K.K. Nair. Mr. Dhawan said that even the photographs suggest about conspiracy on and on, until K. K. Nayiar became minister. There is consistent attack since then on my place of worship.

Mr. Dhawan argued that as per the case of Hindu parties specifically Nirmohi Akhara, they have argued that we never prayed. It was you who didn't let us pray and now you say Limitation started.

You didn't let in, because we didn't let you in, now you say that you will suffer Limitation.

Mr. Dhawan handed over a small compilation of List of Dates showcasing incidents happed since March 1949 till December 1949.

12.11.1949            Police picket was discharged.

- 10.12.1949 The Waqf inspector submitted a report informing as they will not allow us to pray.
- 16.12.1949 K.K. Nair letter to Govind Narain Secretary, U.P. indicating that Mosque was built by using material of temple.
- 22.23/12.1949 It was planned attacked, some members of Hindu community silently placed idol in the Central Dome.
- 27.12.1949 Despite direction to remove the Idol, they Deputy Commissioner refused to follow directions and wrote a letter to replace him, in case state want such directions to be followed.

Mr. Dhawan handed over a compilation volume of photographs of 1950 after the 22-23/12.1949 incident and showcased the several photographs and indicated inscription on which word "Allah" is prescribed in Arabic language.

Mr. Dhawan referred Volume II page wherein copy of report of Mr. Mohammad Ibrahim Saheb Waqf inspector dated 10.12.1949 was mentioned and it was mentioned that because of fear of Hindus and Sikhs no one goes into the Masjid to pray Namaz Isha. If any passenger stays in Masjid he is being put in trouble by the Hindus. Many pandas reside there and they harass Muslims.

Mr. Dhawan read para 3103-3104 on page 1743 indicating that keys of Masjid were with the Muslims but they were allowed to open lock only for 2-3 hours on Friday. When they pass after Namaz, shoes and rubbish is thrown on them by adjoining houses. Bairagies used to make hue and cry during their Namaz.

Mr. Dhawan argued that Muslims were praying in the inner courtyard only.

I am showcasing these all documents since March 1949 to showcase and establish that it was a planned attack, not a sudden miracle.

Mr. Dhawan handed over a compilation volume of photographs after the 22-23/12.1949 incident and showcased 13 photographs. Mr. Dhawan shown the inscription in which word "Allah" is prescribed in Arabic language from the photograph. Alongwith same photographs Mr. Dhawan referred a copy of report dated 03.08.1950 of Bashir Ahmed Khan, pleader / commissioner.

I am showing a possible conspiracy since March 1949 submitted by Mr. Dhawan.

Mr. Dhawan submitted during his argument as:

- You conspired
- You put a lock
- You finally said that it's not a mosque.

Mr. Dhawan showcased the MAP and indicated that division by High Court amongst Hindus/Muslims/Nirmohi Akhara in different colours.

He further indicated Ram Chabutara, Bhandar, Sita ki Rasoi from MAP.

He argued that to reach in inner courtyard you have to pass through outer courtyard.

Mr. Dhawan criticized the way in which division was made in impugned order of place in dispute 1/3 to each party.

An enquiry was raised from the Bench that there is mention of some people were going to made an attempt to force entry inside the mosque on 'Purnamasi'. Has any thing happened on that day, when was 'Puranamasi'?

Mr. Rajeev Dhawan answered that I will check it after consulting his astrologer. Then he answered that it was on 29th but it did not happen.

Mr. Dhawan made an argument to a question raised by Justice D.Y.C. that it is possible to have a composite place of worship and it happens across the world.

### **REFERRED PLEADINGS OF ALL PARTIES IN ALL SUITS:**

#### **SUIT 5- (BHAGWAN SRI RAM VIRAJMAN)**

Mr. Dhawan read out pleading of Suit 5 specifically page 236, 237 and 245 stating that entire Janamsthan is deity. Bhagaan Sri Ram Lal is a divine Child which resides at Asthan Sri Rama Janama Bhumi.

Thereafter Mr. Dhawan read and shown prayer part in Suit 5 wherein declaration was sought for that Annexures I, II & III as belongs to deity. He indicated as what are annexure I, II and III.

Mr. Dhawan argued that as per their claim they claimed annexure I, II and III and argument was made on Parikarma, to make them entitled for entire disputed portion including parikarma. They converted their entitlement for the whole area.

J. Bhushan : You can't differentiate, as per their prayer they are claiming the area inside boundary wall.

Dhawan: Their claim should be understood in the context of their argument. I won't say more in that reference.

Mr. Dhawan argued that if My Lord understand the argument of "Swambhu" then Muslims will get nothing.

J. D.Y. Chandrachud : Place of worship is not the central dome but the entire area.

Mr. Dhawan : Let's assume that Muslims were not there, now tell me How do they know that what was the exact birthplace. He said that exceptions are always dangerous things.

Mr. Dhawan disclosed that Mr. Naphde, Sr. Advocate will argue res-judicata and estoppel from their side.

Mr. Dhawan said Muslims used to go inside after fixing of Railing/Grill and they (Hindus) used to pray from outside.

### SUIT 3 (NIRMOHI AKHARA)

Mr. Dhawan argued that Nirmohi Akhara didn't make a claim for title, they only sought management and charge of temple but they were given yellow portion in MAP.

Mr. Dhawan thereafter read the pleading of Nirmohi Akhara was what they have actually pleaded in their original suit

Thereafter, he referred page 48 from the Suit of Nirmohi Akhara stating that look what all parties are made by them referred defendant no. 1 to 5 (who are state authorities), and thereafter 2-3 Muslims parties.

He said that the grievance of Nirmohi Akhara is basically against the order u/s 145 Cr.P.C.

He indicated from para No. 2 of Suit 3 stating that "Janam Asthan now commonly known as Janma Bhumi" He said that there is massive confusion.

He read para 4 stating that said temple has ever since been in the possession of the plaintiff no. 1 and none other but Hindus have ever since been allowed to enter or worship therein. He said again confusing, are they claiming possession?

He referred amendment after 06.12.1992 incident, and specifically indicated word "some miscreants", he said they miscreants were nothing but Hindus.

He referred Ismile Farooqui judgment and said that let be bold and accept that it was you who demolished the mosque.

He said that suit is silent as what happened on 06.12.1992 and suddenly pleaded the culprits as miscreants, I understand that their name couldn't be taken because of criminal proceedings.

Para 5. No Mohd could or ever did enter in the said temple building.

By Regarding para 7 of the plaint Mr. Dhawan said that its their real case, they are only seeking management and charge. They are not even claiming title.

Para 10 cause of action was read and thereafter Mr. Dhawan read the prayer of Nirmohi Akhara.

He said that against whom Nirmohi Akhara is actually claiming, he is only claiming against the State Authorities, against 145 Cr.P.C. Proceedings, Muslims are formal parties.

He said that it's not a case for immovable property but for possession.

It is clear that the said plaint is barred by Limitation.

The word continuous wrong is used to get rid of limitation part.

**:: LUNCH ::**

Mr. Dhawan referred Article published in the General of Indian Law Institute

J. Bobde : What happed to the River Ganga case in which it was decided as juristic person.

Advocates in Court : It was stayed.

Mr. Dhawan again started his argument and said that Let's assume as they were miscreants, will they allow such agreement in Suit 3.

Thereafter, Mr. Dhawan read the objections filed by Muslims parties in Suit 3. He referred the portion of objection wherein Mahant Raghubar Das suit was referred. He said that the fact that mosque is situated herein is admitted by them and in suit of 1885 the relief was sought only for Chabutara which they didn't get. The difference was only that Muslims can go in the dome and Hindus can worship from outside that's why I am arguing that it is a case of access.

He said that issue of res-judicata will be argued by someone better than him so he is not touching this issue in detail.

He said that Suit 3 is not within limitation and was specifically against 145 proceedings only.

Mr. Dhawan indicated that till 16.12.1949 Namaz has continuously been offered and thereafter idol were installed surreptitiously even then the nature of mosque will not alter.

He argued that there is another temple at Ayodhya which is known as temple Janam Sthan Ram Chandra ji and is in existence for a very long time where the idols of Ram Chandra ji and other Gods are installed.

Mr. Dhawan also read the replication to the defendants no. 6 to 8 (Muslims) in Suit 3 indicating almost same facts.

He said that basically Suit 3 is all about – 145 Cr.P.C proceedings took it away from us, we are being impatient, give it back to us.

He further said that Suit 3 is only concerned about Shebyat right not with title.

Mr. Dhawan read the replication of defendant no. 10 (Umesh Chandra) He said that somewhere they mention 100 years, somewhere 200 years somewhere 500 years (I am not concerned with them).

Mr. Dhawan submitted that they have moved the idol from outer courtyard to inside the central dome. They claim that this is miracle but the possibility is only two, either new idol came in or the old one has been placed inside the central dome.

Mr. Dhawan argued that as per their claim their relief was against 145 proceedings and as per 145 proceedings only inner courtyard was subject matter of receiver now they are claiming to outer courtyard also.

Mr. Dhawan read out some pleading portion and Written Statement of some parties as well.

After reading pleading Mr. Dhawan said that ultimately their claim extended to outer courtyard also. Shia's are saying give it to them, its easy to say to give something which you don't own.

Mr. Dhawan made his submission regarding continuous wrong he said that, continuous wrong is very difficult area to touch in, I will show it to your Lordship from academic and legal authority.

Mr. Dhawan said that their suit will collapse on Limitation only.

Mr. Dhawan referred W.S. of Nirmohi Akhara in Suit 5, he indicated para 4 on page 262, by referring said para he said that look Nirmohi Akhara is saying we don't know who the deity is. Virajman tracked with the word Ram Lala is meaningless. Next friend is not even worshipper, he is not even interested in welfare of temple and has no right to sue.

He highlighted from the pleading W.S. of Nirmohi Akhara from para 4 that Nirmohi Akhara is pleading that Asthan is simply means a place not a juridical person.

Mr. Dhawan indicated from W.S. of Nirmohi Akhara in Suit 5 - that Suit 5 is malicious and meaningless. This is filed only to harass the Nirmohi Akhara.

Mr. Dhawan argued that the idols were moved from Chabutara i.e. outer courtyard to inner courtyard on 22-23.12.1949.

J. Bobde : Any witness said this.

Mr. Dhawan : Showed the evidence of OPW2 who is a witness of deity in this regard wherein he explains as idols were moved from Chabutara to inner courtyard on 22-23<sup>rd</sup> December.

Mr. Dhawan : Showed and read argument of Shri R.L. Verma from para 1705 and 1706 from impugned order. Paras 1705 and 1706 are as follows:-

*"1705. Sri R.L.Verma, learned counsel appearing on behalf of Nirmohi Akhara defendant No.3 raised objection about the maintainability of suits through next friend and contended that there is no averment in the entire plaint (Suit-5) as to why the plaintiff no.3 be allowed to file suit on behalf of plaintiffs no. 1 and 2 as their next friend. He submits that neither there is any averment that the already working Shebait is not looking after the Deity faithfully and religiously nor there is any averment that there is no Shebait at all of the Deities, plaintiffs no.1 and 2, nor there is any averment that plaintiff no.3 himself is a worshipper of the Deities (plaintiffs no.1 and 2) and therefore, is interested in the welfare and proper management of the property and daily care of Deities themselves. Sri Verma submits that Order XXXII, Rule 1 in terms has no application to Suit-5. The suit, as framed, is not maintainable through the next friend, hence, is liable to be rejected on this ground alone.*

*1706. Sri Verma further submits that O.P.W.-2 i.e. late D.N.Agarwal in his own statement under Order X, Rule 2 recorded on 20.4.1992 has admitted that the idols kept at Ram Chabutara, in the outer courtyard was shifted to the inner courtyard and kept under the central dome in the disputed building in the night of 22/23<sup>rd</sup> December, 1949. Further that it is also an admitted position that the idols while kept on Ram Chabutara in the outer courtyard were being looked after and managed by the priest of Nirmohi Akhara and the outer courtyard was in possession of Nirmohi Akhara. It means that the idols belong to Nirmohi Akhara, shifted from Ram Chabutara to the central dome of the disputed building and that being so, the idols cannot be held independent legal entity outside the religious endowment i.e. "Nirmohi Akhara".*

Mr. Dhawan read over the finding which provides that the idol appeared in the inner courtyard for the first time in Dec 1949. So idol shifting took place. (Findings are given in Vol 2 Page 2521, 2522 at para 4071, 4078)

Mr. Dhawan thereafter referred statement of witness Vol. 89 Pg 8745 to 8776, stating that disputed structure has never used since it has constructed against the Islamic law. Dome structure has not separate entrance and it is only through the outer courtyard.

Mr. Dhawan thereafter referred from the pleadings of his Appeal filed before SC.

He argued that question is that when does limitation start? Our case is that it has been started later and idol belongs to Nirmohi Akhara. He supported the case of Suit No.3 and argued against Suit No 5.

Mr. Dhawan argued that if anything has to go, it has to go to suit no 3 as it claiming under the 'Shebaitship'; and conceding in that respect but they cannot Reconcile Suit no 3 with Suit No 5 on point of Limitation. Their case is obviously in odds with each other. My case is simple.

Mr. Dhawan further argued that entire case is based on continuous wrong and limitation but plaintiff in suit no 3 has to prove how did they get the outer courtyard.

Mr. Dhawan further argued that Nirmohi Akhara is seeking only Shebaitship rights of idol so he can given the premises for management.

**He argued that entire case in Suit 5 depends upon LIMITATION and CONTINUOUS WRONG.**

**:: Hearing resumed will begin tomorrow::**

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