

**HEARING DATED: 04.10.2019**

**::RAM MANDIR CASE::**

**As soon as the hearing commenced Mr. Rajeev Dhawan, Sr. Advocate stated that may I know the pleasure of MyLord regarding tomorrow.**

CJI: We are not sitting tomorrow (being Saturday), and this bench will remain till 4.00pm today.

Mr. Dhawan: I will finish my argument on Monday or may be spill over by Tuesday for 20 minutes.

Mr. Dhawan objected to the Writ Petition filed by Dr. Swami. While objecting his presence he stated that when I got to Rajyasabha I sit in audience, he is not an advocate, however, he sits at advocate's seat.

CJI: Tried to divert the topic by saying that 'after 35 days of hearing, we hope to see you in Rajyabha soon'.

Mr. Dhawan replied that I am not intending to go to Rajyasabha.

**ARGUMENT MR. RAJEEV DHAWAN, SR. ADVOCATE, [RESPONSE TO REJOINDER IN SUIT 5]**

Mr. Rajeev Dhawan argued stating that History is a credential for this matter, it's really matter as how we look at it.

In response to the argument as plea regarding Idgah can't be taken at this stage, Mr.Dhawan stated that there was no occasion for raising it until the ASI digging, the Report and the part of response of experts.

In response to the picture on Wall of Mr. K.K. Nair he stated that it's mentioned in the Statement of DW-3/1 Mahant Bhaskar Das, he further stated that picture on

wall at the time when premises was in custody of government officer is an act of trespass.

Mr. Dhawna argued on application of Roman Law on res nullius and quoted a judgment 2005 (1) SCC 457 in its response.

Mr. Dhawn argued that a Mosque is also divine, like a temple.

Mr. Dhawan indicated the various illegalities made by Hindus such as:

- a) Trespass by Nihang Sikh
- b) damaging the mosque in 1934;
- c) harassing Muslims to prevent worship;
- d) Trespass to place idols on 22-23rd. December 1949;
- e) putting pressure in a pending case by rathyatras;
- f) demolition of the Mosque;
- g) defacing the pillars with paint to hide evidence;
- h) sleeping under the domes as a form of prayer;
- i) The conviction and punishment of UP's Chief Minister for contempt.

J. Bobde: Waqf is dedicated to Allah, it's not divined, we would like to see authority on this.

Mr. Dhawan: Mosque is home of God, do I need to establish that, he further said that Ismile Farooqui is set aside by J. Bhushan, otherwise, he had to file review and Curative Petition in that. He further said that when you bow down five times in a day, you manifests it to Allah.

He said that History of India and foreign perception towards India got changed on 06.12.1992.

Mr. Dhawan argued that travelers are story tellers, they are not more than that.

Mr. Dhawan argued that so far as legal proposition is concerned on 'juristic personality' it was not there at the time of Vedas.

Mr. Dhawan argued that does every sacred area will become juristic person, they were worshipping to Ram Chabutara and in 1989, they invented a new concept of 'juristic person', then in 1992, they demolished it.

J. DYC: there is manifestation or consecration?

Mr. Dhawan: What is there to prove, they were praying to Idol from 100 odd years at Ram Chabutara, now they are saying that they were praying to land.

He said that Manifestation is a form of physical preset, manifestation is a part of temple. They said forget the Idol, Swyambhu is a real personality, as it's apply to them, it's apply to us.

Mr. Dhawan argued that in rejoinder they have reproduced as what they have said while presenting their suit.

There is ample evidence of 'Political Violence in Ancient India' as exemplified in Prof Singh's book by the same name.

Juristic Personality as a legal concept is a rigotherous concept which requires applications beyond belief that it requires in each case:

- a. religious belief;
- b. manifestation, consecration and/or acceptance;
- c. continuity of use and worship.

Significantly, in each example where there is 'no particular corporeal form' or prayer or which has been cited for spiritual purpose, there is a temple or structure and part of continuous prayer.

There are four sources of Mahomedan law, namely Koran; Hadis, Ijmaa, Qiyas,

In reply to P.S. Narasimha arguemnet 'he stated that following argument was made by Mr. PSN:

'The enquiry into the existence of the fact, belief and worship must be made by "robust common sense" coupled with the principle of "more probable than not" as laid down by this Hon'ble Court.'

He said that If this proposition is accepted, it will nevertheless apply to Islam:

- a) Islam dedicates the entire life of worshippers to Allah. Therefore, Allah is accepted as the all pervading God.
- b) Islamic civilization still exists.

Thus, the entire argument applies to both the sides.

### **ARGUMENT BY MR. RAJEEV DHAWAN, SENIOR ADVOCATE IN SUIT 4**

Mr. Dhawan read pleading in Suit 4

Mr. Dhawan read W.S. filed by parties in Suit 4

While reading pleading he said that they are able to prove nothing.

Mr. Dhawan stated that according to Nirmohi Akhara response my Suit is time bared, and possession ceased in 1934.

Mr. Dhawan read W.S. of Akhil Bhartiya Hindu Mahasabha.

He said that Mordren Law can't be made applicable in Bhartvarsh while referring page 148 of pleading volume 'A'.

Mr. Dhawan argued in short, on adverse possession, limitation, waqf board, juristic person while read the pleadings.

### **::LUNCH::**

Mr. Dhawan read the finding of High Court Judges in Suit 3 referring his note.

Mr. Dhwan argued on 'Grant' given by the Babur and Britishers for the maintenance of Mosque. In reference of Grant he raised following submissions:

- 1528: Mosque built by Babur, maintenance and other expenses incurred in connection with the Mosque were realized by a grant (Cash Nankar) paid by

the Royal Treasury during the rule of Emperor Babar. Grant was continued by the British Government for the Upkeep of the Mosque. Register of Inquiry of rent free land records that Emperor Babar granted revenue grant of Rs. 302/3/6 to Mir Baqi for the purposes of construction and maintenance of Mosque namely Babri Mosque at village Shahnawa.

- In 1864, the British converted the cash Nankar grant into grant of revenue free land situate in village Sholapur and Bahoranpur in the vicinity of Ayodhya.
- On August 31,1863, an order was passed by Deputy Commissioner regarding the rent-free land
- On September 13,1860, order was passed by the Deputy Commissioner, Faizabad, wherein it was stated that the map of the lands which had been selected for approval for giving in lieu of the lands of the Masjid had been sent.
- Thereafter several orders were passed to consider as to which lands were to be allotted for the purpose of the Masjid.
- Ultimately on October 10,1865 it was ordered that possession of the lands should be immediately given and acknowledgment should be taken.
- Finally, on October 19,1865, it was reported that the proceedings regarding the handing over the land have been completed and the acknowledgement was also confirmed.

Mr. Dhwan argued In 1934, due to communal riots, the domes of disputed structure and substantial part were destroyed. However, it was renovated at the cost of the British Government through a Muslim Thekedar, he elaborated sequence of event in reference of renovation of mosque to showcase that it was a mosque and was in possession of Muslims.

Mr. Dhawan argued that from 1528 to 1857 there was no whisper and/or demand of any place called Sri Ram's birthplace within the precincts of Babri Masjid. For the first time a Chabutra was illegally constructed in the year 1857 within the boundary but outside the inner courtyard of Babri Masjid.

He said that after the incident of 1855, attempts were made by the Hindus to dispossess the Muslims from the disputed site, however these attempts were successfully repulsed, leaving the Muslims in title and possession, subject to certain prescriptive rights of the Hindus over Sita Ki Rasoi and Ram Chabutara, which also, were only recognized in the proceedings of the 1885 Suit.

Mr. Dhawan argued that on December 1,1958, Shri Sheetal Dubey, Thanedar submitted a report in case no. 884, describing that when he took the summon order dated 30.11.1858 addressed to Nihang Singh Faqir, for leaving the place, he received no reply.

On November 5,1860, an application filed by Mir Rajab Ali against Askali Singh in case no. 223 complaining about a new Chabootra being constructed in the graveyard.

On March 12, 1861, an application was filed by Muhammad Asghar, Rajjab Ali and Mohd. Afzal, in furtherance of the previous application, stating that Imkani Sikh had illegally occupied the lands of the plaintiffs and had erected a chabootra without permission near Babri Masjid. Even though on the previous application, orders were issued to evict Imkani Sikh from chabootra but the hut wherein he was staying still remained.

On February 22,1870, Plaint was filed by Mohd. Asghar (Mutawalli of Babri Masjid) praying to evict defendants (Faqir) from trees of Imli, (Bagh Imli), Khandhal and graveyard.

**Mr. Dhawan referred and read sequence of even of litigations/applications, between both the parties (including 1885 Suit), before the present Suits.**

J. DYC: According to your argument you says that Babur was King and land vests in him, he given the land to built a mosque, but according to Waqf land vests in Allah, you also got grants, will that not change the status of land?

Mr. Dhawan argued on sovereignty of Ruler but did not give relevant answer.

J. DYC:: When you says that there were clashes between Hindus and Muslims, your adverse possession plea goes, we have found nothing prior to 1860.

Mr.Dhawan: Also did not give any relevant answer to this question, however, argued on Shahi period was Avadh period.

J. Nazeer: Is there any finding that they were in possession of Chabutara and in what capacity?

Mr. Dhawan: We filed application seeking rent of Chabutara, however, this was dismissed. I will get the detail of it.

He further said that rent used to be divide between both of us. (\*indicating Mutwali and Mahant)

Mr. Dhawan argued on significance of 1885 Suit.

Mr. Dhawan made his submission in reference of Claims by Tahavar Khan (contractor who repaired the Babri Masjid)

Mr. Dhawan argued on K.K. Nair and his role in reference of possession and finally said that on January 5, 1950, Sri Priya Datt Ram took charge and made an inventory of the attached properties (which is infact a repetition as already been argued in earlier suits)

Mr. Dhawan point out the illegalities on behalf of Hindus:  
From 1934 to 06.12.1992 (page 30-31) of his compilation notes.

Mr. Dhawan made his submission on Law of Title he said that possession creates a presumption on title.He also said that in certain circumstances possession alone can decide title.Mr. Dhawan argued on possession and constructive possession.

J. Bobde: If you had possession after 16<sup>th</sup> December, then why didn't you pray?  
Mr. Dhawan said I had constructive possession from 16<sup>th</sup> to 22<sup>nd</sup> December.

J. DYC: Last Friday prayer was on 16<sup>th</sup> December (being Friday) and next Friday was on 23<sup>rd</sup> and according to you, you were ousted before that?

Mr. Dhawan: In any case, its only 4 days and we are talking about huge loss on such 4 days limitation.

J. Bhushan : Indicated High Court finding on limitation on Article 120.

**It's 4.00 PM**

**CJI : ANNOUNCED SCHEDULE:**

14 <sup>th</sup> October - Monday	Mr. Dhawan (Will argue Suit 3)
15 <sup>th</sup> October – Tuesday	Hindu Parties will reply to Suit 3
16 <sup>th</sup> October – Wednesday	Hindu Parties will reply to Suit 3
17 <sup>th</sup> October- Thursday	Res-judicata by both Parties

CJI Said that from Friday onwards it's Chutti..

Mr. Jain for Nirmohi Akhara objected in between stating that last time also I didn't get time to argue, on which CJI said that Mr. CSV kindly look into his grievance.

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