

HEARING DATED: 13.09.2019

::RAM MANDIR CASE::

ARGUMENT BY MR. ZAFARYAB JILANI (SR. ADVOCATE)

- Mr. Zafaryab Jilani, Sr. Advocate appearing for Plaintiff in Suit No. 4 and defendant (for Muslims) in other Suits made his argument.
- Mr. Jilani stated that I will confine my argument to the use and existence of Mosque from 1934 to 1949. He said that he is replying to the submissions made by Nirmohi Akhara as there was no mosque.
- Mr. Jilani handed over a chart of documents to which he is relying upon for the purpose of his argument. He relied upon documents as Ex. A4, A5 & A6 which were filed by Nirmohi Akhara in (Volume 91 page 40 to 76).
- Mr. Jilani argued that on 27th March 1934 riots took place in which properties of Muslims were damaged and many Muslims were killed.
- Mr. Jilani read the documents showing the existence of mosque in 1942, on the assertion of Nirmohi Akhara wherein existence of mosque was denied.
- Mr. Jilani argued that there was no other person except Nirmohi Akhara for Hindus so till 1989, therefore, these documents have bearing on all Suits. By relying upon the documents filed by Nirmohi Akhara itself Mr. Jilani argued that three dome structure referred in the document was mosque only.
- Mr. Jilani showcased the Ex. 49 in Suit No. 1 filed by defendant in Volume III.
- Mr. Jilani referred the documents related to construction of mosque in 1934 such as approval and payment of bills by government officers in regards to the construction of mosque, basically he tried to showcase the existence of mosque by these documents in the period (1934-1949)
- Mr. Jilani referred the application filed by Mutwali and by relying upon this document he said that it was Bairagies and Hindus who demolished and attacked the mosque, he said that my documents shows that this building containing three dome structure was being used as mosque.

- Mr. Jilani referred the document related to white wash of mosque, payment of work.
- Mr. Jilani referred Ex. 24 as order of Deputy Commissioner for payment of compensation, thereafter Ex. A43, Ex. A54, Ex. A45, Ex. A44, Ex. A50.

J. Bhushan: Photographs of word "Allah" was taken in 1950 after repair.

Mr. Jilani: It was already existing there, the things which were got broken, were repaired only.

- Mr. Jilani referred an agreement to showcase that Imam and Mouzens both were there, the salary was being paid to Imam, he said that this agreement was filed before District Magistrate, therefore is a reliable document while replying query of J. Bhushan.
- Mr. Jilani submitted that during the period of 1934-1949 muslims were using the disputed portion as mosque and prayers were being offered. On Friday people used to assemble in large numbers, and other than Friday in less numbers, he said that we had only two Mosques in Faizabad. He argued that this structure was being used as mosque, therefore existed, otherwise it would have been in abandoned position.

THE DETAILS OF DOCUMENT REFERRED BY MR. JILANI IS AS FOLLOWED:

- Ex. A4, A5, A6 filed by Nirmohi Akhara in Suit 4.
- Ex. A49, A6, A43, A51, A45, A44, A50, A48, A46, A47, A52, A7, A67, A61, A 66, A65, A62 A63, A64 in Suit 1.

J. Nazeer: These documents are in reference of inner courtyard only, not related to outer courtyard, he said that in their Suit Hindus has used the word 'Janamsthan'

- Jilani: Earlier they were using Chabutara as 'Janamsthan' then they shifted the Idol inside the inner courtyard.

- Mr. Jilani argued that Sunni Waqf Board is statutory body under 1936 Act. He referred the 'Shia Vs Sunni' Suit and notice sent in that Suit to showcase that because there was existence of mosque, therefore; there was dispute between Shia and Sunni.
- Mr. Jilani thereafter, read out the relevant portion from deposition (evidence of witness) wherein they have stated about existence of mosque.

J. Bhushan : J. Bhushan said that it's not required to go through all the depositions, the chart you handed over to us is quite good, we will have relevant portion from there.

Mr. Jilani : The purpose to show these depositions is that Ld. Judges of High Court have discarded these depositions, therefore, I want to show these depositions to MyLord.

DETAILS OF DEPOSITIONS RELIED UPON BY MR. JILANI ARE AS FOLLOWS:-

PW1, PW2, PW3, PW5, PW6, PW7, PW8, PW9, PW14, PW21, PW23, PW25. These depositions were showcased by Mr. Jilani to showcase of existence of mosque by their evidence.

- Mr. Jilani mentioned that Muslims were jailed for attempt to pray in 1954, then further referred various testimonies of the offering of namaz at page 5760, 5873, 5877(Vol 3).
- After reading the relevant portion from deposition he said that, the government had directed to removed the Idol, however, district judge said that it's not possible.
- While concluding the arguments Mr Gilani said that the argument of Nirmohi Akhara as mosque was not there between the period of 1934-1949 is untenable.

Mr. Jilani concluded his argument so far as Suit 3 is concerned.

:: LUNCH ::

The post lunch session was quite interactive as for around 45 minute Mr. Dhawan concluded his argument in Suit 3, and thereafter, argued Suit 5 for 1 hour. Mr.

Mr. Dhawan started his submissions in very positive manner, he said that Friday is a good day to wind-up, he said argument in these suits must be closed after their submissions, he said that he will not repeat what have been argued and after arguing this Suit 3, I will start to Argue Suit 5.

Thereafter, Mr. Dhawan referred a Summery Note 'Preliminary Summery' and another note 'Submissions in reply of Suit 3 of Nirmohi Akhara'.

Mr. Dhawan made his concluding submission based upon above referred 'Summery Note' on the following issues:-

- I. Preliminary
- II. Argument of Nirmohi Akhara
- III. Response to the Statement in Court.
- IV. Response on pleading, Exhibits and Witnesses.
- V. On the Word Belonging and Possession in the Plaint
- VI. Continuing Wrong
- VII. Juristic Personality and Right of Shebait.
- VIII. Consequence of Dismissal of Suit.
- IX. Right not to be based on illegal Acts.
- X. Submission on Case Law cited.

Though Mr. Dhawan had already argued on above referred issues in detail, however, he finally concluded his argument in reference of Suit 3, based upon 'Summery Note'.

::SUIT 5::

MR. DHAWAN : THEREAFTER MADE HIS SUBMISSIONS IN REFERENCE OF SUIT 5.

CONVERSATION BETWEEN JUDGES AND MR. DHAWAN ON DEITY, SWYAMBHU, JURISTIC PERSON

Mr. Dhawan stated that they have mentioned Skandpuran, Gazetteers (travelers account), they are saying that they are there since time immemorial, however, they have submitted the documents only since 1950, therefore, the evidence doesn't establish any right.

J. Bhushan: Based upon these documents and evidence they are establishing their faith and belief.

J. Chandrachud: The belief is on the basis of sanctity of place, which has to be accepted.

Mr. Dhawan: The first Suit was filed in 1885 by Mahant Raghubar Das representing Shebait.

J. Bhushan: Present Suit was the first Suit representing deity.

Mr. Dhawan: It was invented by them in 1989.

J. Bobde: The disputed place is a juristic person, according to you it was invented by them in 1989 for the first time, you tell us as before that if they have filed any suit, on behalf of juristic person.

J. Bhushan: It's a developing law, you can't say as it's 500 years old law.

Mr. Dhawan: I will keep that in mind and I will file Suit over Suit on behalf of deity, because it's evolving.

J. Chandrachud: The 'Janamsthan' is sanctimonious. You tell us as whether the 'Janamsthan' can be 'juristic personality'. Prior to 1989 there was no such assertion in reference of 'Janamsthan', if you have you show us any claim on behalf of 'Idol'.

Mr. Dhawan: So far as law is concerned on Idol there is no controversy, however, we can't apply the law of Idol on 'Janamsthan'.

J. Chandrachud: We want to know as what are those criteria to consider the 'Idol' or 'Janamsthan' as deity? You tell us the 'test', or law where 'Hindu Juristic personality' ever recognized as 'Swyambhu' so that we can testify it.

Mr. Dhawan: When the agriculture started, the human cut forest, developed 'Well', explored 'Mountains', started to worship objects, they started to worship 'Sun', 'Moon' to protect them. Everything which is worshipped is not a juristic personality. You pray all the God's, you pray 'Sun', You pray 'Moon'. Thereafter Mr. Dhawan referred Jain's case, Madurai Case, and made his submission on the basis of these judgments.

J. Chandrachud: You want to say as whatever you worship does not become juristic person?

Mr. Dhawan: This concept of 'Homa' which says you pray to all gods

J. Bobde: Whether the Ram Janam Bhoomi area has certain right? You tell us as whether the objects configured have certain rights?

Mr. Dhawan: I don't want to invent such arguments, we may say that when you become juristic personality you have your rights as well as duties.

Justice Bobde: 'Bhu' means existence, 'Swyambhu' means self existence. If there is a juristic concept, then there may be a concept of being manifested in that form.

J. Bhushan: Whether they used this word (Swyambhu) in pleading?

Mr. Dhawan: No it's not used, however, they argued.

J. Chandrachud: The right of deity is evolving law, it is evolved to protect the right and interest of worshiper. The rights of deity are protected in that way.

Mr. Dhawan : A trust is made for poor person, it's a juristic personality, we can't use object of 'juristic personality' of a trust, you say it's a holly place, because it's holly place we have to protect it, despite the fact as not a single worshiper go there.

Such suits must be tested on 'Limitation', 'Res-Nalius'.

They are arguing because there is 'Swyambhu', therefore, 'Adverse Possession' will not be applicable, 'Limitation', 'res-judicata', will not be applicable, any other law will not be applicable.

Thereafter, Mr. Dhawan read all the party made defendant in the Suit 5 and gave a description of all the defendants to the court, he importantly emphasized on defendant No. 21 'Ram Janam Bhoomi Nyas' and said that he is introducing all the defendants only because of this - defendant No. 21 'Ram Janam Bhoomi Nyas'.

Thereafter Mr. Dhawan read all the issues framed in Suit 5 and response of High Court on these issues.

CJI: We would like to have a compilation volume on all these issues and responses of the judges mentioning page numbers, indicated AOR (Izaz Maqbool).

Mr. Maqbool : It's already prepared MyLord.

Mr. Dhawan : MyLord will take the matter on Monday!

CJI to Mr. Dhawan: Yes, we will hear it on Monday, after discussing it for a while, CJI stated that if you required any break, then, on that day Ms. Meenakshi Arora, Sr. Advocate will argue A.S.I., and thereafter, we may resume on your argument next day, (so you will get your break in that way).

You tell us when you are require break.

Dhawan: I am depending upon MyLord, as MyLord say.

CJI : Ok we will decide it on Monday.

:: Hearing resumed will begin on Monday::

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