

**HEARING DATED: 18.09.2019**

**::RAM MANDIR CASE::**

**TIME SCHEDULE:**

Mr. Dhawan stated that he will take this week and next week. He said that he will finish reply in these two week from his side. Thereafter it was discussed as two days will be taken by Mr. CSV and Mr. Mishra, Thereafter, Mr. Sushil Kumar Jain will take his own time (later on Mr. Jain said that he will take 3-4 days). Mr. Dhawan said that thereafter we will argue Suit 4 for couple of days and then other sides will reply 'Suit 4'. Though he fairly said that most of his arguments in Suit 4 are already covered.

**CJI said that we are hopeful that matter will be concluded by 18.10.2019.**

Mr. Dhawan said that we need time to argue 'Molding of Relief' in case if it is required, he said that they will keep 1 week as reserved.

CJI said that special sitting can be held on Saturdays or court may sit 1 hour extra per day, if required.

**MEDIATION:**

The bench also considered the letter sent by mediation panel seeking orders on the requests made by some parties in case for resuming settlement.

CJI said that the parties may pursue mediation before the panel simultaneously. Below order was passed by CJI in reference of Mediation:-

*"The hearing of the appeals, which is at a very advanced stage, will continue without any interruption. If, in the meantime, the parties desire to settle the matter(s), including, by resort to mediation by the earlier constituted mediation panel, they may do so and place the settlement before the Court, if reached.*

*We also make it clear that the terms and the process of settlement including mediation, if resorted to, will abide by our earlier order dated 8th March, 2019, with regard to confidentiality".*

**ON PETITION FILED BY SUBRAMANIAN SWAMY**

CJI said the wife of Dr. Swamy sitting in court that we will hear you also, on which Dr. Swami's wife said that we will take only two Hours.

Mr. Dhawan on which said that our people also wanted to intervene but we said as 'No Intervention' is required since it is Appeal arising out of Original Suit. The intervention filed by Dr. Swami is gone; however, he filed Writ Petition. He said that hearing of said Writ Petition will open flood gate. He further said that, 'I will have to reply to his own people as why I advised them not to file intervention'.

### **ARGUMENT OF MR. RAJEEV DHAWAN (SR. ADVOCATE) IN SUIT 5**

#### **NOTE ON EXHIBITS AND OTHER RELEVANT DOCUMENT FILED BY PLAINTIFF'S IN SUIT 5**

Thereafter Mr. Dhawan made his submissions on Exhibits which he was reading yesterday.

Mr. Dhawan relied upon the note submitted by him titled as 'Exhibits and other Relevant Document filed by Plaintiff's in Suit 5'

Mr. Dhawan vehemently argued that Historians report was not considered by High Court merely on the ground that Shri D.N. Jha did not sign it.

J. Bhushan: It was a general observation of the court.

Dr. Dhawan: 'Let me go my Lord', 'Let me go' (wanted to argue more on this), it's overboard, so far as the Historian are concerned.

Dr. Dhawan stated that this Multi-disciple group covered everything in that report.

J. DYC: You want to say that this finding as D.N. Jha didn't sign it, is wrong.

Mr. Dhawan: There is demining criticism across the board. There has to be some conclusion, judgment demands it.

J. DYC: ASI will get the higher weight-age, it's much reliable than the opinion of Historian.

Mr. Dhawan: That's not monopoly here. I will put prefix as 'Expert Opinion' before saying it as 'opinion'. We have to have an answer for not placing reliance on this opinion.

Thereafter Mr. Dhawan read the opinion of High Court on the evidence of Historian from para No. 3618 to 3627 page No. 2087 to 2094 in Volume II.

Mr. Rajeev Dhawan went through the entire note on Exhibits.

### **NOTE ON PROOF OF BELIEF – I, SKAND PURANA, TRAVELLERS, GAZETTERS**

- After reading the complete Note on Exhibit Mr. Dhawan refereed another note named as 'Note on Proof of Belief – I, Skand Purana, Travelers, Gazetteers, he referred the finding of High Court that exact birth place of Lord Ram can't be even traced from Skand Purana.
- Mr. Dhawan made his submissions in respect of 'Ayodhya ka Ithias', 'Hans Baker'
- At the end of the Note in Para 15 Mr. Dhawan read and mentioned as follows:-
- "In view of the foregoing it is clear that the Ram Chabutara was believed to be the birthplace of Lord Ram and was worshipped as such. This can be corroborated with the plaint of 1885 Suit as well as the order of District Judge dated 18/25, 03, 1886 passed therein. Suit No. 1 @ pages 4200-4201 Volume 3 of impugned judgment.
- He finally mentioned that No Traveller / Gazetter mention the place below the Central Dome.
- Mr. Dhawan stated that Plaintiff in Suit 5 relied upon Skand Puran, Hon'ble High Court said that no clear picture emerges from History Book.
- High Court further examined the birthplace by Skand Puran, Skand Puran and other material on record doesn't identify the place of birth, it says born in Ayodhya.
- He thereafter argued '**Preponderance of Probability**' - What **preponderance** of the evidence means is that the burden of proof is met if there is greater than a 50% chance that, based on all the reasonable evidence shown, plaintiff's claims are true and defendant did in fact do the wrong that caused the damage.
- Mr. Dhawan said that we can't put any credibility on travelers. He argued that Ram Chabutara was also called as 'Vedi', it was the belief of Hindus that Lord Ram was born on 'Ram Chabutara'.
- Mr. Dhawan argued that some of the travelers did not record that they saw any mosque there.

- He further said that no travelers mentioned that birthplace of Lord Ram was believed below the Central Dome. Ram Chabutara was believed to be the birthplace.
- He said that ruins / pillars strongly indicate as it was 'Buddhist Scriptures'

### **NOTE 'CERTAIN CASES WHICH WERE RELIED UPON – COMPILATION ON LAW'**

Mr. Dhawan thereafter again handed over a note on cases which were relied upon by plaintiff in Suit 5. He very quickly read over his submissions in reference of cases relied upon.

### **NOTE ON WITNESS STATEMENT IN SUIT OF 1989**

Mr. Dhawan handed over a note on Witness Statement in Suit of 1989 which were categorized in following category:

- Witness on fact (OPW1, 2, 4, 5 6, 7 12 & 13)
- Witness in relation to Vishnu Hari Inscriptions (OPW8, 10 & 15)
- Expert Witnesses – Historians (OPW9 and 11)
- Expert Witness- Religious Matters (OPW 16)
- Expert Witness – Archaeologist (OPW 3, 14, 17, 18, 19)

The next section of that note was providing a detailed chart relating the testimonies given by each of these witnesses.

It was indicated in the note that Archeology witnesses will be dealt by Ms. Meenakshi Arora.

Mr. Dhawan read the highlights of evidence of witnesses from the said Chart wherein relevant page no. of High Court were also mentioned.

### **VERY IMPORTANT :: QUERIES OF JUDGES REGARDING 'WALL/RAILING' AND BELIEF OF HINDUS ::**

J. D.Y. Chandrachud: What was the distance between the Chabutara and Central Dome.

Mr. Dhawan: The entire area was around 1460 sq. yard, he didn't give any specific answer.

The MAPs were called by J. Bobde to see the scale and to get an idea about distance between Ram Chabutara and Central dome. \* (The distance between Ram Chabutara and Central Dome would be around 13 to 16 sq. yard or around 40 sq. feet).

**J. DYC: Prior to 1855, it establish that Hindus were going inside the ‘disputed structure’ thereafter railing erected by Britishers.**

**J. DYC: Ram Chabutara was creation of that time only; Ram Chabutara was set up at the time of railing. Justice DYC said that this was the belief of Hindus that they are offering their prayer to LordRam and they kept on worshipping on Ram Chabutara. Hindus used to worship Ram Chabutara and used to offer their worship inside the central dome considering it as birthplace. They used to peruse from the railing to offer their prayer to LordRam.**

Justice Bhushan and Justice Bobde also supported this observation of J. DYC.

Mr. Dhawan: That’s the conjecture of MyLord. That was a walled area, there was a main Dwar and then a side Dwar, hence entire space was Muslim mosque. We don’t know and can’t assume as, ‘where they were going’ and ‘where they were praying’.

Act of them as pray to Ram Chabutara, with great respect I would say that it’s only a conjecture on MyLord part. No witness of that time was alive at the time of recording the evidence to speak truth.

Mr. Dhawan argued as from where MyLord got this. He again emphasized (in little loud voice) that it is walled area and that’s the fact. They used to see from railing because of curiosity.

**J. DYC:** The reference to Chabutara, the barriers was put up in 1855, just after the railing.

Mr. Dhawan: The answer to MyLord query is as it’s wholly conjecture. Prior to 1855 Hindus went in, and Muslim went in. They both went in. After 1855 Hindus were worshipping from Ram Chabutara but didn’t go inside. However, on 22<sup>nd</sup> December 1949, they put up the Idol inside mischievously and claimed it as incarnation of God.

J. DYC: At the time of Britisher they haven’t had any other option, when they were placed outside the structure. At time they had strong belief as Lord Ram birth place is inside the central dome, they could only have ‘view/darshan’ through the railing to their Lord. **That strong believe finally resulted into incidents and that belief inspired them to go inside for their Lord.**

Mr. Dhawan: I don't know, I go to zoo to see Lion and I see it from the outside of railing. That's because of curiosity.

**J. Bhushan: They used to go to the railing because they had belief that Lord Ram is there inside.**

Mr. Dhawan: Where is the evidence, I am unable to see as from where it comes from. There is no evidence.

Mr. P.V. Yogeshvaran asked Mr. Dhawan to read page 1689 para 3071 (indicating as this is coming from there), however, due to query of judges such paras were not read.

Mr. Dhawan argued that this was the time of Britishers. People were fighting for worship and this was the climate. If I would have been born there I would have gone to the railing due to curiosity. It's a contest of riot situation and at that time nothing was under control. Hindus were scared, Muslims were scared, that wall / railing was 'Wall of Peace'.

CJI: Looking into the aggression, anxiety and loud voice of Mr. Dhawan, CJI asked Mr. Dhawan to look into this issue and asked him to reply later, CJI said you may reply later. CJI also said Mr. Dhawan you are looking tired today.

Mr. Dhawan sought apology for being aggressive and he said that MyLord is right; I have to satisfy myself before Satisfying to MyLord. Mr. Dhawan sought liberty from bench to wind up early as it's 3.45 pm only, he said he is tired.

Mr. CSV relied upon the travelers and gazetteers to show as before 1855 there was no discussion as Hindus were not going inside the 'dispute structure', however, bench raised.

**:: Hearing resumed will begin on Thursday::**

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