

## Notes on hearing held on 20-09-2019

- 1) RD commenced his argument referring of Ismail Faruqi case (1994) 6 SCC 360. He has first read the para regarding the statement of purpose of The Ayodhya Act, 1993 tabled by SB Chauhan and submitted that the purpose of acquisition of the land was to give flexibility while distributing the land among the parties with respect to moulding of relief. He has also read certain paragraphs where UOI has submitted affidavit in this regard. To this CSV has read para 15 qua para 57 of the judgement.
- 2) Thereafter, RD has submitted W.R.T. Order dated 14 March 2018 whereby the Hon'ble Supreme Court has not allowed S. Swami to withdraw his Writ Petition concerning Right to Prayer at the place and refused to convert it into Intervention Application and whereupon directed this Writ to be listed before the appropriate bench to be heard on its own merit. On this RD has submitted that this very same question is being heard by this bench currently and said, "I am just bringing it to the notice of my lord so that it may not further open the floodgate after this case on the same issue."
- 3) Then RD has started reading his note on inscriptions (NOTE ON PROOF OF BELIEF - II) numbered as A-80. He has submitted that these two inscriptions indicate that mosque was created by Mir Baqui in 1528 CE. He has submitted that findings of justice Agarwal on these two inscriptions are frivolous and he should not reject the report of Martin.
- 4) Then he referred various travellers and gazetteers note on the presence of inscriptions: A) Montgomery Martin published in 1838 B) Edward Thornton published in 1854/58 C) P. Carnegi 1870 D) WC Bennett E) A.F. Millet in this land revenue of Faizabad district F) Faizabad Gazetteer by

H.R. Nevill published in 1905 G) Faizabad Gazetteer by Nevill 1928 H) U.P. District Gazetteer Faizabad by Basanti Joshi 1960 I) **Shariki Architecture of Jaunpur of 1889**, RD has specifically focus on this and read details about the inscriptions and tried to clarify doubts about 930 Hijri and 935 Hijri, which happened because of miscalculation/skipping of alphabets while ascertaining date of construction J) Babur Nama by Beveridge 1921 to claim that the mosque was built under the command of Babur and built by Mir Baqui K) Epigraphia Indica – Arabic 1964 and 65 which provide inscription dated 935 AH L) Mughal Kaleen Bharat Babur translated by Syed Rizvi published in 1960, this mentions about the text of two inscription and states that the mosque was built by Emperor Babur M) Book title – Babur by Radhe Shyam in 1978 this also mentions the text of two inscriptions and indicates the name of Babur and mentions construction date 935 Hijri, similarly Babur Nama by Navalpuri 1974, Ayodhya ka itihaas by Lala Sitaram and Hans Baker in the book titled as Ayodhya.

- 5) Then he submitted that the arguments advanced by the opposite parties in relation to inscriptions is not sustainable as per Pg. 5-6 of his note regarding authenticity of these inscriptions because of confusion in the date and whether it remains evidence or not, and with respect to the confusion regarding different names of Mir Baqui referred in these inscriptions and historical accounts.
- 6) He submitted that there are unrefuted conclusions which can be drawn from the inscriptions: 1) The mosque was built under the command of Babur and it was built in 935 Hijri (1528 CE).

- 7) Then he started submitting that the reasoning arrived by the High Court while rejecting the inscription is erroneous because different authors just used different names for Mir Baqui and it should not be a ground to reject the authenticity of these inscriptions. (Pg. 12-13 of his note).
- 8) Justice Agarwal has created a new doubt which is frivolous by saying that when the presence of the inscription has been noted that local people believed that the mosque was built by Aurangzeb and it was unbelievable that till 1807 there was no Hindu person available who can read Persian in order to ascertain that the mosque was actually constructed by Babur to disregard the report of Martin.
- 9) Further RD has submitted that Justice Agarwal has supplemented his findings by observing that since the text of the inscriptions and the number of inscriptions has not been mentioned in the report hence, it is not reliable.
- 10) Then he again submitted that justice Agarwal discarded the evidentiary value of inscriptions by observing that it was based on secondary evidence and it is not known if Thornton has viewed the same himself or could read Persian/Arabic. Finally, J Agarwal concluded from the words “an inscription” that there must have been only one inscription on the wall attributing it to Babur.
- 11) RD has submitted that if such reasoning has been adopted as given by justice Agarwal then the entire evidence of travellers must be set aside because they were not fluent in local language. Further, Beveridge’s report on the inscriptions have been discarded on the ground that she herself had neither read the said text nor visited Ayodhya at any point of time thus was based on secondary evidence.
- 12) Then he submitted that justice Agarwal has made distinctions and comparisons between the word honour before Babur, mention of different

names of Mir Baqui, use of word lofty building instead of mosque in the inscription and about the year of construction 930 H instead of 935 H.

- 13) He has submitted that these discrepancies in the translations are minor and the difference in the year of construction has occurred because of confusion due to Fuhrer's Mis-transcription of pulpit inscription in Persian where date has been given in the form of Arabic Alphabets arranged into words.
- 14) He has also submitted that the authenticity of the inscriptions has been also doubted because of the alleged repair work in 1923 (or during the riots 1934), which is not correct to say. The conclusion of this part has been given in page 14 and 15 of his notes.
- 15) To this Justice DYC has said even the opposite side has dealt with this issue but it won't help in anyway for the present case.
- 16) Thereafter, as per the earlier query of J. Bobde regarding whether there exists any mosque with Sanskrit inscriptions: He has given three examples of Qutub Minar, Atala Masjid, Jaunpur and Lal DarwazaMazid. At page no 15-16 of his note.
- 17) Justice Bobde asked to show the photograph of the inscriptions, to this RD has submitted that it is there in A54, but the photograph is not very clear. Then Justice Bobde has asked regarding pulpit, about its nature and whether there were any inscriptions there upon. To this query clarification

has been provided by the advocates from sunni wakqf board that it was used by the Imams to give call for Azan/Namaz and sometimes the upper pulpit to sit there upon.

- 18) On this issue, Senior Advocate Sushil Kumar Jain has intervened on behalf of Nirmohi that as per his instruction idols were kept at these pulpits. RD as per the query of Justice Bobde has said that as per para 10 of the report the inscription on the pulpit is blurred, but it says it is in Persian.

#### **NOTE ON JURISTIC PERSONALITY OF IDOLS AND AREAS**

- 19) Then RD has started submitting on legal points regarding idols and their legal personality.
- 20) After reading a case law he has submitted that Ram Janmabhoomi Nyas is just a Special Purpose Vehicle and central to add the fire in this issue and it had its aim to remove the old structure and to build temple there upon. He has referred the prayer and averments in suit number 5 to substantiate his claim that purpose of the plaint is to remove all, destroy all to the extent necessary for building the Temple.
- 21) Justice Bobde has contradicted on this and said that the suit has been filed with an understanding that there was an old temple which was demolished, and mosque has been created.
- 22) RD to this said, “no it was under the Idea that Ideal was there hence to destroy the structure and build the temple on the same site.”
- 23) He further submitted that Devki Nandan Agarwal cannot be the next friend to the idol and Nayas is a SPV only for the purpose to retake the past.

- 24) Then he has submitted that the idea to give legal personality to a property makes it immune to every other law for example limitation, law of adverse possession which is wrong. Even if such personality is being given to the property then it cannot be immune from the other laws and should be treated similarly with the other legal entities. On this point he has referred an old book of BN Saraswati on Hindu Law and Endowments to explain the juristic personality of the idol.
- 25) He has submitted that Nyas has been created for the purpose of Kaar Seva and for purely Socio-Political movement as described in the white paper published in this matter. He has also said that Nyas had started collecting bricks all over the India for this purpose which clearly reflects the nature of this movement created by the Nyas and suit no 5 is filed to achieve this purpose.
- 26) Then at the request of Chief Justice of India the bench rose for the day with an instruction that the court will resume the hearing of this matter on Monday from 12 o'clock to 5 o'clock with a ten minutes interval.

Prepared By:

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