

::RAM MANDIR CASE::

Mr. Dhawan handed over a copy of judgment to the CJI and companion judges, it was an old judgment. (Mr. Dhawan, however, did not said anything about it, it's not part of argument of this case)

CJI said thanks to Mr. Dhawan for this.

ARGUMENT OF MR. RAJEEV DHAWAN ON JURISTIC PERSONALITY OF IDOLS AND ARAES

Mr. Dhawan continued his argument on Juristic Personality of Idols and Areas' on the basis of his note. Mr. Dhawan argued as follows:

- At what time the belief transpired into 'juristic personality'.
- Apart from it's simply a matter of belief, we have to know the answer of question as by what time 'belief' manifested into some 'form'.

J. Bhushan: Deity and belief are different. Belief takes centuries to convert into 'deity/juristic personality'.

Mr. Dhawan: As far as Idol is concerned there is an Idol concentrated upon Chabutara. The question is as who is plaintiff no. 2, this plaintiff no. 2 is different from Idol. As per them, plaintiff No. 2 can't be divided, it can't be acquired.

Mr. Dhawan further argued that Swyambhu and belief are different in this way, plaintiff no. 2 is not an Idol, it's infect something else. Janmasthan could be much larger in area as compared to the exact spot claimed. He said that idol was on the Chabutara and then later it was shifted. There must be some objective manifestation. It cannot be the whole area.

J. D.Y.C.: Whether it is concentrated self revealed deity? In the case of concentrated Idol only the faith and belief does not make 'juristic person',

something more is required which is akin to manifestation as GANESHA, OM, SHIVLING. Is that your submissions?

Mr. Dhawan: Yes.

J. DYC: For that purpose you have to admit their belief, and only after admission you may say that even if you 'belief' then also it's not manifestation?

Mr. Dhawan: Let's proceeding on that assumption as there is a 'belief' which is recognized.

J. DYC: They established by the way of their prayer they were considering it as 'Janamesthan'

Mr. Dhawan: I am in reply (My Lord may keep in mind), First Category is 'belief' then the question arise 'when' this belief came from as area is 'Jamamesthan', by what time this belief converted into 'juristic personality'. Second Category is self revealed.

J. Bobde: Is this necessary for an entity to have a divine personality. Is divinity is a recognizable entity?

Mr. Dhawan: Tenuous or not tenuous, how can I question someone's subjectivity.

J. Bobde: It's necessary for a deity to be considered as a 'juristic person' as you are saying 'belief' is too subjective?

Mr. Dhawan: I am not entering into the question of subjectivity, opposite side is not making claim based on subjectivity.

J. DYC. You mean to say that first stage is evidential enquiry as this is 'Janamesthan' second stage is assuming 'belief' what is objective standard, is it 'physical shape' or 'manifestation' ?

Mr. Dhawan : Mr. Parasran argument was twofold, he argued divinity, people belief that over a period of time. In a divine form there are two forms, Idol or self revealed. Without divinity both are nothing. What is Dharmashastra in that, can we say 'belief' may convert an area in 'Swyambhu' this is third form of manifestation according to 'Dharmashastra'. Your Lordship can't invent 'Dharmashastra', as a concept of evolution, it's all together different.

Mr. Dhawan argued that technique is there, are we on transformation of Hindu Law, they say as 'Well', 'River', 'Tree' it's all Vedic, however, there is no juristic personality attached to all this, however, these things are respectable being important for life. Our ancestor created a culture to respect them. There is nothing 'juristic' but we respect them.

In the 'Vedic Period' they respected Sun, Moon, River. Two judgments are there as area can be infect a juristic personality. In one of the judgment it's said that if lot's of temple are there we can establish spirituality.

Where does this area idea came in. Are we adding as area is self manifested? Plaintiff in Suit 5 destroyed everything, they got rid of Shebait, they said that let there be a new temple which will be constructed on this personality. The suit is thus merely a vehicle to destroy and remove the old structure.

J. Bobde: Divinity becomes important for impartibility, it is important for the parties to show divinity.

Mr. Dhawan: Dharmashastra recognized two juristic personalities; this Court may create a third one.

J. DYC: A beautiful summary was given by your witnesses, they said as 'Janamesthan' has same significant for Hindus as 'Muccha' for Muslims.

Dhawan: Then how does it convert into a 'juristic personality'. 'Ram Janambhoomi' is a creation, before 1989 no one claim it is a 'Juristic Personality'.

Dhawan: How can we divide 'juristic personality', it may be divided, or may not be divided. It's accompanied divinity, divinity comes from belief, then it converts into 'Juristic Personality' as being sacred.

Mr. Dhawan: This claim is based on divinity / spirituality and runs through it, we have also said as this area is respected, we have to respect Ram / Allah. This nation has more diversity than other nation.

J. Bobde: Whether is it possible to have list of things considered as Juristic Personality by the Courts over centuries or so?

Mr. Dhawan: I have to write 18th or 20th PHD on this. We have to limit ourselves as per Article 322.

It's not an open question to speculate Dharamshastra.

There are two kind of belief.

1. People Made
2. Manifestation

J. DYC: We got it, now what's your answer on adverse possession, limitation? Don't take it otherwise, however, if this place is accepted as deity then what would be your argument on 'adverse possession' and 'limitation'? Plaintiff No. 1 is juristic personality, it's not disputed.

Mr. Dhawan: Plaintiff No. 1 in the form of Idol / Area. Enough law is laid down on that. It's different from Plaintiff No. 2. As far as Shebait is concerned they are entitled only to outer area. Would that not be subjected to acquisition. Even Waqf can be acquired. Private Waqf / Public Waqf. There is dedication, when it's used for long time, it become public Waqf.

J. Bhushan : This is not a case. There is no such case related to Waqf.

J. DYC: Idol can't be acquired but land can be acquired?

Mr. Dhawan: In this situation, it's not immune to acquisition, or partial acquisition. Adverse Possession / Limitation. The moment you claim adverse possession, you accept title. In this case, where is the title, they say that they worship at Ram Chabutara. Will Parikarma itself create a title, or it's form of worship.

J. Bhushan: It's a form of worship and shows divinity attached to it, it shows spirituality.

- Mr. Dhawan then read from his note and read the mentioned portion from following witnesses:
- OPW4, OPW7, DW1/2, DW3/4, DW3/6 and DW3/8.
- From the evidences I read it's proved that all the witnesses have given different description of 'Parikarma'.
- Thereafter Mr. Dhawan read the Case Laws on the basis of his note, however, J. Bhushan stated meanwhile that the judgment you are reading, in which it is also said that no Idol is required for worship.
- Your Lordships lifts the veil in corporate matters, I am asking Your Lordships to lift juristic personality, in this case, to find out what exactly is beneath

Mr. Dhawan concluded as follows: :

- a. Deities can be created by either self-manifestation or by human beings in artificial idol form.
- b. In the former case, there must be a) a manifestation b) a belief and c) an overt religious act by which the area is recognised for worship d) continuous worship takes place.
- c. As far as idols are concerned, the land must be given absolutely it must be consecrated prayer based on belief should continue. Technically, even

- if the exact prayer are not made, the consecration followed by worship may not be enough.
- d. Worshipers are beneficiaries. whether a temple is public or private will depend on the belief and practice of the intended beneficiaries and whether a temple is thrown upon to the public.
 - e. Belief is not the basis of juristic personality.
 - f. Although it is claimed that no restrictions apply to Janmabhoomi by way of limitation, adverse possession, the right to sue and so on. Any such area could be subject to similar restrictions.

:: LUNCH::

MR. DHAWAN HANDED OVER A NOTE ON LIMITATION AND ARGUED LIMITATION:

After reading the important sections of Limitation Act, he read and argued the background of section 10.

Mr. Dhawan referred Vidhya Varuthi case in reference of Section 10 of Limitation Act.

Mr. Dhawan argued section 10 in detail.

Mr. Dhawan argued Article 134A and 134B.

Mr. Dhawan referred Judicial Decision on Limitation and Minor Deity.

Mr. Dhawan argued that proposition that limitation doesn't apply to an idol is contrary to the basic principles of the law of limitation.

Mr. Dhawan concluded that S. 10 doesn't apply to this case.

Mr. Dhawan argued between 16th December, and 22nd December / 1949 for the purpose of limitation. He said that I have not lost possession on 16th, nobody took

my possession on 17th and 18th. He said that even otherwise it's only 2 days out of limitation. Do I have to prove as I was in possession on 17th and 18th.

Mr. Dhawan referred pleading to show cause of action.

Suit 5 was filed in a situation when deity was being well represented by Shebait.

It's a settled law as deity is not minor for the purpose of limitation.

Therefore, Suit 5 is not maintainable and barred by limitation.

SUBMISSION IN REPLY TO MR. P.N. MISHRA, H.S. JAIN (HINDU MAHASABHA) AND MR. M.C. DHINGRA (SHIA WAQF BOARD)

Mr. Dhawan again handed over a compilation note in reply to above advocates arguments.

Mr. Dhawan reverted on regime argument of Mr. Mishra. Mr. Dhawan submitted that the relevant regime was the previous British law based on Justice, Equity and good conscience, statute law and judicial decisions. Thus, the furman was not absolute law over the surrendered and conquered territories but only to the extent recognized.

Mr. Dhawan made his submission on exact location argument made by Mr. Mishra, he took location in Ahodhya Mahatamya of Skand Puran, Hans Bakher Travellers and Gazetteers, etc. however, according to him nothing give exact location of birthplace of Lord Ram.

Mr. Dhawan reverted to Babur Aurangzeb argument made by Mr. Mishra he said it is itself mentioned in Suit 5 as Babur / Mir Baki constructed a mosque. All travelers and Gazetteers mentioned as it was built under order of Babur.

Mr. Dhawan reverted interpolation argument made by Mr. Mishra, he referred the finding of J. Sharam and evidence of two witness and stated that there is sufficient evidence to show as there was a mosque in existence at the disputed site.

Mr. Dhawan reverted to the Koranic argument made by Mr. Mishra, Mr. Dhawan subkitted that, whoever the ruler was and whether he violated the Quran or Dharma, the actions will ultimately have to be tested by Constitution of India, he however, said that it will be dealt separately by Mr. Pasha.

Mr. Dhawan responded in very short to the submission made by Mr. Jain

Mr. Dhawan reverted to the argument of Mr. M.C. Dhingra and stated that their claim is barred by time.

SUMMERY NOTE ON SUIT 5

Mr. Dhawan produced the summery of his submission made till date in Suit 5 and handed over a separate note in this regard, covering summery of his argument.

Highlights of Summery note is as follows:-

- 1) The core argument in the plaint is that there is a need to destroy the existing structure and replace it with a new grand temple in a new era of Hindu faith.
- 2) The juristic regime attached to Janmabhoomi for a purpose so that no claim of adverse possession can be made against it because it is sue generis and the area would be impartible. No limitation can apply. RD has hence submitted that such a regime is self-styled and the regime applicable to idols should apply.
- 3) The entire argument is based on belief from scattered sources like travellers account and gazetteers which have been found to be inconsistent and inconclusive. As, indeed,SkundPuraan.

- 4) No idols in the Vedic period and mountains, trees etc. were revered but not possessed of juristic personality. After that juristic entities can be of only two kinds 1) self-manifestation of deity in nature and 2) Idols by human intervention. He has advanced this point that the personality based on belief must be acted upon and consecrated and supported by practice in a concrete sense.
- 5) No claim can be based on illegalities. In this case the purpose of Nyas is to destroy the existing structure.
- 6) Constitutional claim for Hindus has been given protection but the same has been denied for Muslims on the ground of essential practices such claim are against the secularism of the constitution.

Hearing concluded by 5.00pm.

CJI Stated that we will follow the same schedule till Thursday (till 5.00pm) and will sit till 1.00pm on Friday.

: Hearing resumed will begin on Tuesday::

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