

**HEARING DATED: 24.09.2019**

**::RAM MANDIR CASE::**

**ARGUMENT BY MR. RAJEEV DHAWAN**

**Compilation (A-85) mentioning certain judgments on SABANAYAGAR Temple, Chidambaram**

Mr. Dhawan handed over a compilation (A-85) mentioning certain judgments on SABANAYAGAR Temple, Chidambaram

The said compilation was containing following judgments

1. Ponnuman Dishitar & ors Vs Board of Commissioner AIR 1939 MAD 682
2. Sri Sabanayagar Temple, Chidambram Vs State of Tamil Nadu
3. Sri Sabanayagar Temple, Chidambram Vs State of Tamil Nadu
4. Dr. Subramanian Swamy Vs State of Tamil Nadu 2014 (5) SCC 75

In the Chidambram cases the Chidambram temple contains an altar which has no idol.

Mr. Dhawan didn't make much submission on above judgment.

**COMPILATION – MISCELLANEOUS NOTE ON TEMPLES AND SADACHARA**

Mr. Dhawan handed over an another compilation note on temples and Sadachara

This compilation contains an Illustrative list of temples in India with No Idols.

Mr. Dhawan presented an illustrative list of temples wherein there is no Idol, it's a list of around 10 temples, including Pakshi Mandir- Gujarat, Hadimba Temple in Manali, Om Banna Temple.

In those temples there is no idol.

## **SADACHARA**

Mr. Dhawan mentioned that the path chosen in this case was intermittent belief with indifferent practice, but not 'Sadachara' – one of the sources of Hindu Law. He stated that Sadachara would have required greater certainty and would be also accepted as not necessarily in conformity with Sastra.

## **EXTRACT OF MAYNE'S HINDU LAW & USAGE (13<sup>TH</sup> EDITION 1991)**

From the above Extract of Mayne's Hindu Law Mr. Dhawan argued that third source of Hind Law is custom. Custom is transcedant law.

Mr. Dhawan read and referred to custom which according to him are contrary to the SASTRAS and which nevertheless must not be interfered with, and after referring certain custom in connection with marriage etc which were contrary to the SASTRAS.

Mr. Dhawan argued and read the Custom overrides Smriti. He said that there are very few cases in which express prohibitions in the Smritis are contravened by custom. In most of cases, the prohibitions themselves are not imperative, but are only monitary.

Mr. Dhawan stated that fullest effect given to the custom by both courts and by legislation.

Mr. Dhawan argued regarding records of local custom based upon his note and read the content from his note.

Mr. Dhawan argued regarding validity of custom, differing from the general Hindu Law.

Mr. Dhawan argued that customs which are immoral opposed to public policy or opposed to enactments of the legislature will neither be recognized or enforced.

Based upon above Mr. Dhawan attempted to develop an argument as custom in Hindu Law are not beyond the legislature, if any custom is contrary to public policy it can't be recognized or enforced.

### **SUBMISSION IN REPLY TO SUIT NO. 1 OF 1989**

Mr. Dhawan made his submissions in reply to Suit No. 1 of 1989. He divided his argument in the following parts.

1. Preliminary
2. Basic Arguments Advanced
3. Submission on Pleading
4. Exhibits and Relevant Documents filed by Plaintiff of Suit No. 1 of 1989
5. Witnesses on behalf of Plaintiff
6. Cases cited by Counsels
7. Conclusion

Mr. Dhawan read the relevant pleading from the Suit No. 1 and informed the court that this was filed in 16.01.1950 seeking declaration for entitlement to worship at the disputed site.

Mr. Dhawan read the prayer made in Suit.

Thereafter Mr. Dhawan read the Written Statement of Muslim Parties in Suit No. 1 and highlighted as follows from his W.S.:

- The Suit property is not Janambhumi but a mosque.
- Mosque was Constructed by Babur/Mir Baqi
- 1885 Suit was in the knowledge of Hindus. In 1885 Suit a map was attached in which Mosque was depicted.
- Under Muslim Waqf Act 1936, the Chief Commissioner decided that mosque was constructed by Babar and it was a Sunni Mosque.

- Muslims have been in possession of mosque, being Waqf property.
- Plaintiff never had possession therefore, no suit is maintainable.
- He stated that affidavit filed of Muslims person in 145 CrPC proceedings can't be relied upon, as these persons were not cross examined.

**Mr. Dhawan mentioned that res-judicata will be dealt separately by Mr. Naphade, Sr. Advocate.**

Mr. Dhawan made following submission on Plaintiff:

- Plaintiff has not established ownership
- Plaintiff has not filed any application to represent entire Hindu community.
- Plaintiff has not complied with mandatory provision Section 80 CPC
- Till 16.12.1949 the Namaz was being offered.
- Another Janamesthan temple exists in Ayodhya since a long time and this shows that the claim as Babri Mosque is Janamesthan was false.
- He said that property is not birthplace.
- No idols were kept before 22<sup>nd</sup> December 1949.
- Under Waqf act a survey was conducted by the Chief commissioner and same was registered under Waqf.
- Plaintiff is bared by estoppels.

Mr. Dhawan read the replication of Gopal Singh Visharad (plaintiff in Suit 1) and relevant portion from Written Statement of State and concerned officials.

Mr. Dhawan concluded as follows:

- ❖ Plaintiff was mainly filed against the State Authorities.
- ❖ The plaintiff was filed to enforce personal right of plaintiff, this right gets automatically extinguished on this death.
- ❖ There was no mention of place of birth of Lord Rama.
- ❖ The plaintiff didn't mention that he has done any worship inside the disputed place.

- ❖ The State clearly stated that property is being used as mosque for a long period.
- ❖ It has not been used as temple.

Thereafter Mr. Dhawan made his submission in reference of Exhibits filed in Suit No. 1 and he made a shot submission as per his note in each exhibit.

Mr. Dhawan also showcased the finding of judges against each exhibits.

Mr. Dhawan also made a submission on Statement of following Witnesses

DW1/1 – Sri Rajendra Singh

DW2/2 Sri Raja Ram Pandey

DW3/3 Sri Sahdeo Prasad Dubey

Mr. Dhawan finally concluded as follows:-

- The original plaintiff was asserting a personal right of worship which can't be given to anyone else after his death.
- The Idols were placed on 22-23<sup>rd</sup> December 1949. Therefore, there was no occasion for plaintiff to worship.
- On the basis of Ex. Filed by plaintiff it can be asserted as Hindus parties had access only outer courtyard.
- Hindu parties referred to the disputed site as Babri Mosque till 1950.
- DW1/1 and DW1/2 themselves stated that they never went inside the mosque (disputed structure), despite there being no lock in the grill wall.
- Mr. Dhawan also argued Swami Narain case.

**:: LUNCH::**

**AFTER LUNCH Mr. ZAFARYAB JILANI, SR. ADVOCATE MADE HIS SUBMISSION ON HISTORICAL DOCUMENTS AND GAZETTERS ETC.**

Mr. Jilani Submitted that there is no mention of actual site of construction of Ram Janambhoomi temple in Valmiki Ramayan or Ramcharitmanas of Tulsidas.

He further mentioned that there is no mention of any worship was being offered by Hindus below the middle dome.

J. D.Y.C. : it is clear that there is no dispute that Ram was born in Ayodhya, but the particular place is disputed.

Mr.Jilani: Birth of Lord Rama is in the North side of disputed place.

J. Bobde: As per your argument Ayodhya is accepted as birthplace, and you have also stated that Ram Chabutara is accepted, because there is finding of district judge.

Mr. Jilani: This fact is not disputed as Chabutara was in their possession and being worshipped. He said the dimension of Chabutara is 17' ft x 21'ft.

Mr. Jilani showcased the relevant portion from page no 4200-4201 from impugned order of relevant portion of Civil appeal of 1886.

Mr. Jilani referred statement of OPW16 stating that in his cross examination he stated the word 'Janam Bhoomi' referring fifth couplet. He said that the word city represent the entire city. This witness accepted that in the RamCharit Manas there is no mention of Ram Janam Bhoomi elsewhere.

DW3/3 Shiva Naravan Tripathi mentioned that in Ramcharit Manas there is no mention of any special place regarding birth of Shri Ram Ji.

DW3/7 Mahant Ramji Das stated that there is no mention regarding birthplace.

DW20/2 Swami Avmuketeshwarnanad Saraswati also mentioned that in Valmiki Ramayan and Ramcharitman there are reference about place of places of Ramchandra ji, Dasarath ji and Kaushalya and Kaekai. However, there is no reference in these book as where Lord Rama was born.

Mr. Jilani referred page 9545 containing statements of above witnesses "there is no mention about the birthplace of Ramchandra ji in the above choypayee, it is only about taking birth of Ramchandra ji"

**Basically on the basis of Statements as referred herein above Mr. Jilani attempted to establish as there is no information about exact birthplace.**

J. DYC: asked Mr. Jilani to read page 9548 wherein there is mention of birthplace in the west of Sita Koop. The place between East and South is Agnikona and Sita koop falls on Agnikona from Janamesthan. Jamamesthan Mandir situated on the North of disputed place. 3

It was discussed as Sitakoop is at a distance of 200 steps from Janamesthan temple.

J. DYC: Can't Hindu believe that Ram was born at a particular place at Ayodhya?

Mr. Jilani stated that faith and belief can't be changed, but it has to be tested. Mr. Jilani further submitted that at the most MyLord may reach on the conclusion as place of birth was existing there at Sita koop.

After arguing Statement of Witnesses Mr. Jilani referred Ain-e-Akbari

J. Bobde : There can be three possible theories:

1. Babur built the mosque after destroying the temple.
2. Babur built the temple at the site where a temple stood earlier (without demolishing).
3. Babur built the mosque at a vacant site.

Mr. Jilani: Our argument is no. 3 - that Babur built the mosque at a vacant site. Any temple which might have existed there had long disappeared. The land was vacant when the mosque was built.

Mr. Jilani made his submission on following:

Aine Akbari

Extract of Report of William Finch from the Book –Early Travelers in India by William Forster

Extract of Tiffinthaler published in 1786 – Mr. Jilani argued that in Tiffenthealer account there is no mention of Janamesthan Temple. There is no mention of joint worship by Hindu-Muslims. There is no mention of belief / faith of Lord Rama below middle dome.

Extract of The Sharqi Architecture of Jaunpur by A.Fuhrer.  
Gazetters of Walter Hamilton (1815-1828)

**Meanwhile Following conversation took place between Mr. Jilani and Judges:**

**J. Bobde : There is no mention about mosque in Ain-e-Akbari?**

**Mr. Jilani : This mosque was not important, it got importance only after 1885.**

**J. Bobde : It was built by Babar, how can you say as it was not important?**

**Mr. Jilani: It was built by Mir Baki (Governor) on his instruction.**

**J. Bobde : Even, how can you say that a Mosque built by Governor is not important?**

**Mr. Jilani: There are Dozens of mosques in Ayodhya, it became important today because of this dispute.'**

**J. Bobde: But it's difficult to understand as why this mosque was not mentioned in Ain-e-Akbari?**

**Mr. Jilani: That's not the only mosque, there are other mosques also.**

**J. Bobde: Then all mosques should have been mentioned. We are asking these question because we have an assumption that there was no Mosque.**

**Mr. Jilani: They have themselves mentioned in their plaint (Suit 5), if Suit is false then it has to be dismissed on this ground.**

**J. DYC: They have mentioned Extract in their Suit.**

**Mr. Jilani: The pleading should have been supported by evidence.**



**J. Bhushan: 6<sup>th</sup> Century A.D. Skand Puran was originally written, it mention about place of birth?**

**J. Jilani: The date of publication of SkandPuran in 6<sup>th</sup> Century is not admitted.**

**J. Bhushan : Your witness has admitted it?**

**Mr. Jilani : I will check up the records and will revert.**

**Mr. Jilani: It will also has to be established from the direction mentioned in Skand Puran.**

Mr. Jilani argued that there is no such belief as Hindu used to worship below central dome.

**When Mr. Jilani was making his submission on Tiffintheller, J. Chandrachud stated that this appears as true description, as he has mentioned about two pillars, J. Chandrachud also stated that he has mentioned that Lakhs of people comes there in "Chetra" and he is referring to spot.**

J. Bobde : Where is this Ramkot?

Mr. Jilani : Ramkot is entire locality and we call it as "Mohalla Ram Kot". Parties referred to the MAP. Mr. Jilani mentioned as Fort is not there at Ram Kot, it's on the bank of river, its habitat and protected. He said that this fort was existing at the time of Tiffintheller, we have nothing to do with the Fort of Ramkot at Ayodhya.

**J. Bobde: Is this your argument that they are unable to locate the exact birthplace of Lord Rama? Is this your case?**

**Mr. Jilani: My argument is that this place is mosque, and not the place of birth, however, it is admitted as they worshiped at Ram Chabutara considering it as place of birth.**

Ram Chabutara and Central Dome is about 65ft.

**: Hearing resumed will begin on Wednesday::**

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