

HEARING DATED: 25.09.2019

::RAM MANDIR CASE::

ARGUMENT MADE BY Mr. ZAFARYAB JILANI, SR. ADVOCATE

MR. JILANI CONTINUED HIS SUBMISSION ON HISTORICAL DOCUMENTS AND GAZETTERS ETC.

Mr. Jilani made his submissions on travelers account.

Mr. Jilani mentioned the Extract of "The Sharqi Architecture of Jaunpur" by A. Further.

Mr. Jilani stated that we did not interrupted their belief or Aastha regarding Ram Chabutara.

Mr. Jilani made his submission on Gazetteer of Walter Hamilton 1815/1828, he said that this is referred in judgment, but this document is not filed by either party. He further stated that in the said Gazetteer there is no mention of Ram Janam Bhoomi or place of birth.

Mr. Jilani Mentioned Report of Montgomery Martin, he stated that in the said report nothing is mentioned about Ram Janam Bhoomi or to the place of birth.

Mr. Jilani submitted regarding extract of book by P.Carnegi of year 1870. Mr. Jilani mentioned that in the said book the theory of demolition of temple and construction of Mosque was mentioned, however, no Historical fact is mentioned is that. He said that it was based upon local belief.

Mr. Jilani submitted that we have not taken any action to evict them. We, just accepted their belief only with respect to their prescriptive right and not with respect to title.

Mr. Jilani relied upon Hwen Sang, Buddhist predominance, Monstary. He said that at 7th Century tombs were there which is mentioned in the Ain-e-Akbari. He mentioned about Vikramaditya' time as was the situation of Ayodhya prior to 1000.

Pillars are mentioned but there is nothing in form of astha or belief of that time regarding the existence of worship inside the mosque.

Mr. Jilani argued on following:

- Gazetteers of the Province of Oudh of year 1877.
- Report by A.F. Millet of year 1880.
- Archaeological Survey report by A. Further of year 1891
- Fayzabad Gazetteer by H.R. Nevill of 1905
- Imperial Gazetteer of Indian Provincial Service United Province of Agra & Oudh of year 1908
- Extract of Fayzabad Gazetteer by H.R. Nevil of 1928
- Gazetteer by Edward Thornton of year 1858
- Four reports by Alexander Cunningham – 1862-65 (1871 Edn)
- United Provenance District Gazetteer of 1960

J. Bhushan : They had no option therefore, they built Chabutara outside.

Jilani : There is no mention in Tiffenthelar's and other's travelers account and there is no evidence to the effect that as birthplace is inside the Mosque but they are worshipping at Chabutara finding no option.

Below are highlights of argument of Mr. Jilani:

- ❖ Ram Kot is Mohalla and several buildings have been named therein as Mohalla Ram Kot.
- ❖ According to their belief Chabutara was the birthplace.
- ❖ Chabutara is around 60 ft away from building.

- ❖ According to 1885 Suit they have not claimed the inner courtyard and mosque was established there.
- ❖ Belief has to be considered on the basis of fact as what was in 1858 to 1870.
- ❖ Documents of 1858 shows that they were not claiming inner courtyard that time.
- ❖ As per UP Govt Gazette there were only 10 temple during that period.
- ❖ The theory of birth of Lord Rama inside the middle dome was not existed that time.
- ❖ 1949-1989 during this period the birthplace was not under middle dome, by way of 1989 Suit they extended it to larger area.
- ❖ There are only oral evidence on record to say that birthplace was believed under middle dome.
- ❖ Extracts of Gazetteer by Edward Thornton (1858) - In this report also there is no mention of birth of Lord Ram Lala and about the local tradition that the temples built by vikramaditya was demolished by the Aurangzeb.

Mr. Jinali referred following conclusion based upon his note and submissions:

- None of the document shows that where is the exact birthplace of lord Rama.
- There is no mention in Valmiki Ramayan and other document regarding exact birthplace.
- Hindus parties failed to prove their faith/belief regarding middle dome upto 22nd December, 1949.

CONVERSATION TOOK PLACE BETWEEN MR. JILANI AND JUDGES JUST BEFORE CONCLUSION:

J. Bobde : Before 1855, is there any evidence as Hindus were fighting for worship and Muslims were not allowing them?

Mr. Jilani: Nobody attempted, if Hindus had concern, they had their concern to the outer portion. There is no evidence. I will give you the exact date after my argument.

J Bobde: Both sides may give the chronology of events in this regard, as attempts of Hindus, if any, fighting for worship?

J. Bobde: Put a remark about Nihang Sikh incident in 1858?

Mr. Jilani: He didn't go to the inner portion, however, he raised flag. Mr. Jilani mention that he was not Hindu, He was only Sikh.

J. Bobde: Skih also worshipping to the Lord Ram.

Mr. Jilani: It was first non-Muslim pray recorded in that period.

J. Bobde: You both give chronology of event in this regard.

J. Nazir: This dispute of Nihang Sikh is mentioned in 1885 Suit.

Mr. Jinali: So far as admission of Prince Anjum Quader is concerned he represents only himself. His statement is not binding upon us.

ARGUMENT MADE BY MS. MEENAKSHI ARORA, SR. ADVOCATE ON ASI (ARCHEOLOGICAL SURVEY OF INDIA)

Ms. Meenakshi Arora made following submissions:

- The mosque is existing since 1528, and that's a title Suit. Both parties are claiming title.
- When someone claims title, it is obligatory to put documentary evidence and in the matter nature of evidence was:
 - (i) Oral evidence from year 2000

(ii) Gazettes, Travelers, and Historical facts

- Though that's not my subject, but I am only adding it, I am representing ASI report.
- In 1885 they were seeking permission to construct temple, but that Suit was rejected, they went in appeal in 1886. Ms. Arora read the finding of Judge in Appeal on page 4200 of impugned order. It was mentioned in the said order dated 18.05.86 that the event happened 356 years ago, it is too late now to remedy the grievance, all that what can be done to maintain Status Quo.
- It's 2019 now, they said it in 1886, and today it is more disputed.

J. Bobde: How do you say that, you can't say as more disputed, we have heard the matter.

Ms Meenakshi: Order of Sub judge, Faizabad states that they were in possession of Chabutara in 1885, they are not claiming title in that Suit? At that time also the claim of Hindus were not on title, however, the nature of evidence today is related to title.

Ms. Meenakshi: I am not on the issue of title, my case depends upon evidence, gazetteers and ASI report.

Ms. Meenakshi mentioned that ASI is like Social Science.

Ms. Meenakshi Arora tried to make an attempt that this ASI report can't be taken into consideration, she states that the report is based upon assumption and presumption. She states following ground for that:

- Report is inconsistent with facts.
- Report u/s 45 is only an opinion.
- If it is an opinion and based upon science then though it may consider as evidence but it's very weak kind of evidence.

:: LUNCH ::

MS. MEENAKSHI PUT A NOTE: CONTAINING FOLLOWING:

- ❖ List of Dates
- ❖ Appointment of ASI for Excavation
- ❖ Summary of Results of the ASI not attributed to an author

Ms. Meenakshi read list of dates based upon her notes related to ASI. The said list of dates is starting from 01.08.2002 (wherein High Court directed to ASI to do Survey) and runs till 04.12.2006 (wherein no party examined the representative of ASI).

Ms. Meenakshi : The ASI didn't report to the demolition.

J. Bobde: How can the ASI report to demolition?

Ms. Meenakshi: If ASI is not able to show demolition, then there is more to come up from 1528, in that case on what basis the Suit will proceed.

Bobde: But how do you know that whether the building was fallen or demolished?

Ms. Meenakshi: There must be some techniques, as whether it was broken by Army or Burnt.

J. DYC: What you will do with the demolition?

Ms. Meenakshi: Gave an example of Somnath Temple, she states that if there is no material to show demolition, that's most important. ASI didn't return anything in this regard.

J. DYC: The underlying foundation shows that mosque was raised upon some structure.

Ms. Meenakshi: Our case is as Babur came and built mosque, we are bound to find previous civilization, civilizations are found in ruins.

I would put that assumptions and presumption, if the place is lying barren and someone comes after centuries and claim that there was a temple, I used to worship here.

I would say that after 400 years it's not open to you. I am trying to answer the claim that whether a mosque is built in 1528. I am answering as whether the mosque was built by Babur / Aurangzeb, it's impossible to find this time, where is the material.

J. Bobde: There is a practice of "Jirnodhar" if an old temple of this importance is about to fall then it must have been demolished, nothing can come about it.

Ms. Meenakshi: There was demolition, there was a temple, the claim is on the basis of adverse possession against the deity, I am not on it. "The Swyambhu" argument was established by their witnesses. They have to establish as there was a temple before 1528 and it's demolished, and it's not their case at all.

Ms. Meenakshi referred her note on ASI and read some contents from it. She tried to put before court as ASI was prejudice and was on assumption as there was a temple. The conjecture of ASI was that temple was there.

J. Bobde: "Jirnodhar" is not their case?

Ms. Meenakshi : We are drawing an inference as there was a Hindu Temple, In 1528 mosque was built and it existed till 1992, in 1886 it was said it's too late, such inference should also be given weight age.

J. DYC: That related to adverse possession to set up a case of endowment?

Ms. Meenakshi: There was no claim to of underlying structure. There was no such faith / belief, and it came in 2003 as structure is underneath. Demolition is an important aspect which did come in ASI report.

Ms. Meenakshi read from her notes. Then she came on objection part of report, she said that conclusion summery was not signed by any member.

Nazeer: When did this report marked as Ex. Before High Court?

Ms. Meenakshi asked from Mr. Jilani and told that High Court proceeded taking it as commissioner's report.

J. Bobde: Did you attempt summoning any witness?

Ms. Meenakshi: We had seen as what had happened to the other witnesses.

J. Bobde; Whether ASI report is marked as evidence by any party?

A conversation took place in this regard and finally CJI stated that it was as per court's order.

J. Bobde: This is court's commissioner's report, we are on the content of the report, have you taken any objection on it such as 'summery is not signed'? Does High Court took any note on it?

Then a discussion took place on Order 26 Rule 10A and Rule 10(2). For ready reference and understanding said conversation Order 26 Rule 10 of CPC is produced below:

"10. Procedure of Commissioner

(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and depositions to be evidence in suit. Commissioner may be examined in person - The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

⁴[Commissions for scientific investigation, performance of ministerial act and sale of movable property.

10A. Commission for scientific investigations

(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9".

Ms. Meenakshi: Objection are in volume 13?

CJI : You read section 10(2) of CPC

Ms. Meenakshi: Read section 10(2)

J. DYC: This is the remedy you had. You may say before court that I want to examine this person. That's not the stage to raise as you have not signed the summery. You didn't avail the remedy at that time; it's closed to you now.

Ms. Meenakshi: Be it as it may.....

J. DYC: You had to say at that time only.

J. Bobde: So far as producing the same report before court is concerned there must be a forwarding letter or affidavit.

J. Nazeer: This should have been challenged, this order 26 Rule 10(2) is for that?

CJI : Let it be . We have taken a note of it.

-You did not summon court commissioner as per 10(2)

-You attempted to raise objection, court said at the time of final order we will consider it.

Judges made a conversation to each other:

Ms. Meenaking again put the submission raising objections to the ASI

J. Bobde: Is this the stage to argue it, you can't assail ASI now, that's not the stage, however, you can assail finding of the court.

CJI: It has been part of court record and on this ground the summery report was not signed separately.

Ms. Meenakshi: I will put an illustration as every author of book put editorial, however, chapters are written by different writers.

Ms. Meenakshi read from the note. And argued regarding as every layer of soil has different colour and label, if it is not correctly labeled then it may lead to a wrong conclusion.

J. Bobde: It may lead to an error related to the period, not for the structure.

:: 4.20 PM ::

CJI: Singed affidavit is found by the registry.

Ms. Meenakshi again made her submission on different layer, trenches, pillar base.

J. Bobde: What I was saying was period may not effect as what was below that?

Ms. Meenakshi: If there is an existence of 'A', 'B' & 'C' layer, the point is that as from what time to ruins come from.

J. Bobde: The reason is whether there was any temple which is demolished is found below the mosque or not or whether there is any structure attributed to temple, then thereafter period comes?

Ms Meenakshi: What is found there as Pillar Base, Wall. This could have been Muslim Structure or Idgah.

J. Bobde: What's the difference between Idgah and Mosque.

Ms. Meenakshi: In Idgah there is an outside area to offer prayer on Bakrid or Eid.

J. Bobde: Is this habitation area, town or city?

Ms. Meenakshi made her submission on 'Pranala' wall 17 and wall 18.

J. Bhushan: There was no such pleading like 'Idgah' or as there was any Islamic structure?'

Ms. Meenakshi: My Suit was filed in 1961, at that time there was only Suit No. 3, and there was no such case, only in 1989 they filed Suit 5, since 1961 to 1989 (28 yrs) no suit was filed. It wasn't necessary as same mosque is in existence as it was in 1528.

J. Bobde: We can only inferred demolition, there is no such evidence, that's not the case.

Ms. Meenakshi again attempted to read from her Note and again attempted to press objection.

Judges discussed amongst them.

CJI: We all are on consensus that, these all objections you had to put before commissioner? Can we do it at this stage?

Ms. Meenakshi: The report is erroneous.

J. DYC: You have not adopted procedural remedy, if the report suffers from any infirmity.

Ms. Meenakshi: Summery was over relating. No author signed it. Report is inconsistent. It's bad. It's my submission. Justice Aggarwal draw inference beyond the report. How can we rely upon ASI which suffers irregularity.

CJI: Our query is as if there were such irregularities, then you should have availed 10(2), the commissioner should have been called for cross examination. Your answer is not adduced to the procedure. Please deal with it.

Ms. Meenakshi: May I do it tomorrow My Lord. She sought permission to address further tomorrow.

CJI: We can't take your objection at the stage of 1st appeal, if such objections were not taken before High Court.

: Hearing resumed will begin on Thursday::

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