

HEARING DATED: 26.09.2019

::RAM MANDIR CASE::

Court assembled by 10.40 AM, and just after the assembling of Court, CJI stated that we were discussing the schedule of the case. Till 18th October we have 10.5 working days.

CJI described following schedule:

- 1 Day Ms. Meenakshi Arora (ASI Sunni Central Waqf Board)
- 1 Day Mr. Naphde, Sr. Adv for Res-judicata + Mr. Pasha
- 2 Days- Hindu Side (all parties) for Rejoinder
- 2 Days Mr. Dhawan for Suit 4
- ½ Day Molding of Relief - Muslim
- ½ Day Molding of Relief – Hindus
- 3.5Days For reply and rejoinder of Suit 4 + Nirmohi Akhara and other arguments

Mr. Jain (Nirmohi Akhara) mentioned that he also need some time, on which CJI said that we remember as you said 3-4 days, we will look into this.

Ms. Meenakshi: I will either finish today i.e. till end of the day or will take 1 hour tomorrow morning.

Mr. Dhawan: My Lord I will address My Lord on Law and if My Lord will is satisfy then we will proceed further. Mr. Dhawan addressed to court in the following manner:

- We are in replyorder 26 Rule 10(2) they made an application and Ld. Judge said as it's not necessary to cross any person, Ld. Judge said that we will look at the stage of cross examination.
- Mr. Dhawan argued on Rule 9 and Rule 10, he said that Rule 9 gave substantive power, it's a substantive power to make investigation, however,

Rule 10 grant procedural power and 10A, 10B and 10C are substantive provisions. 10B is irrelevant to this case.

- Mr. Dhawan argued that this court is a constitution bench and order of this court will be implemented in each court, it will effect Rule 10 completely. Mr. Dhawan said that from now, if cross examination is not done then there will be no right to reject the commission. It will have far reaching effect on the commission itself and all High Courts will follow that.
- They made a request, we didn't, and however, we both didn't cross examined.
- This is an evidence which form part of record. They said we have to dig to see whether a temple was destroyed or not? Apart from 'Swyambhu' this will also be Res Nalius.

J. DYC: You can't assail it now, unless you confront it at appropriate stage, one question related to bonafide, presumption, nothing more, nothing less.

Mr. Dhawan: But we have to see as is there any contradiction in the report, doest the summery given, describes as massive temple, as protrude by other side, Is this like as we didn't file objection so it's end of the matter.

Mr. Dhawan stated that it's not a one party trial, as court said that we will deal with it at the time of final argument.

Mr. Dhawan submitted that the yesterday exercise as whether who signed it or not is entirely futile exercise. It's not a question of signature, it's related to authorship, there is no point to argue that. That's an authentic summery.

Mr. Dhawan stated that have I forfeited my right to reply.

J. DYC : No.. No..

J. Bhubde: The only thing is that the question on report could have been raised before expert witness as per procedure described u/s 10(2).

Mr. Dhawan asked something with Ms. Meenakshi and said CJI as my Ld. Friend rightly suggested that.....CJI interrupted....

CJI: Before you listen to your Ld. Friend you should have to listen us first....You said that is your right is forfeited .. you got your answer as no...if you would have lead expert evidence, then how could it be denied the cross of that witness. Ms. Meenakshi you may start now, we will deal with that...

Mr. CSV read Para No. 3808-09 from impugned order:

"3809. Initially the case set up by the plaintiffs (Suit-4) was that the building in dispute was constructed at a place where neither there existed any Hindu religious structure nor the place in dispute was place of worship nor there exist any evidence to show birth of Lord Rama thereat. However, when the excavation proceedings progressed, a marked change in the approach of plaintiffs (Suit-4) became evident. Some of the Archaeologist, who also deposed later in favour of plaintiffs (Suit-4), against ASI report, tried to set up a new case that there appears to be an Islamic religious structure existing beneath the disputed building or that there existed an Islamic religious structure when the disputed building was constructed. The suggestion was that it could be either an Idgah or a Kanati Masjid wherein only one long wall on the western side was constructed with a niche. The consensus appears to be amongst the eight experts of Muslim parties, more or less accepting the existence of a structure beneath the disputed structure. The above approach that the earlier structure was a Islamic religious structure excludes the possibility of a non religious structure at the disputed site beneath the disputed structure. It narrows down our enquiry to the question whether such structure could be an Islamic religious structure or non Islamic structure i.e. a Hindu Religious Structure".

MS. MEENAKSHI COMMENCED HER ARGUMENT ON ASI AS FOLLOWS:

- Ms. Meenakshi made her submission regarding the different layers of Walls excavated by ASI.

J. Nazeer: What was the period of Wall?

Ms. Meenakshi : Aprox 12th Century.

Mr. CSV: It was demolished in 1100AD and reconstructed after 30 years.

Ms. Meenakshi: The report say that there is wall no. 17, the description of that is wrong to some extent. I will come on it later.

Ms. Meenakshi: The speed from which the work was carried by ASI is unprecented, they said as photography is dim due to bad light, they also said that monkey's damaged it.

Ms. Meenakshi stated that ASI made trench in the size of 4 x 4, however, the normally trenches are made 10 x 10.

J. Bhushan : After Gupta period, there was no Vikaramaditya Period.

J. Bobde : You please verify this.

Ms. Meenakshi; The case is as there was a massive construct and that was a temple, and the second question is as when the construction took place. Then a discussion took place on age of this.

CJI: We are not going in stone age era or you show us as what was immediately below the surface? We want to know Medieval era and early Medieval? The issue related to massive wall and pillar basis for large structure?

Ms. Meenakshi: Vikaramaditya was not from this period.

Mr. Dhawan: Chandragupta II was also called as Vikramaditya, this was verified by Mr. Ranjeet Kr. by reading content from Wikipedia.

Ms. Meenakshi: I would like to say as there was Islamic influence during the last Medieval period, it is called as Medieval – Sultanate. Therefore, the Wall could be a wall of Idgah Wall or Temple Wall, we can't draw inference as this was temple Wall. Any Idgah Wall faces West, this wall is also facing West.

J. Bhushan: There is no pleading in this regard. They had a pleading that there was a temple, can we allow you to develop your argument regarding Idgah at this stage.

Ms. Meenakshi: Earlier there was no occasion, at the time of filing of my suit. The dispute started at 1850. In 1989, they came up with this theory as temple was destroyed, to say as something is below we have to draw assumption or presumption, why would the Idgah would not be inference. I find no reason to ignore it.

Medieval period had a lot of Islamic influence and that can't be ignored. ASI noticed different level of floor at Medieval period and broken leveled wall.

J. Bobde: When there is finding as out of 50 pillars 4 pillars are constructed in different period.

Ms. Meenakshi: Shown as page 51 volume 83 of ASI report.

:: LUNCH ::

MENTIONING FOR ARUGEMNET BY MR. JAIDEEP GUPTA, SR. ADVOCATE

Just after Lunch Mr. Jaideep Gupta, Sr. Advocate appearing for Dharam Das (Respondent No. 12 in Suit 4 and Respondent No. 14 in Suit 5) mentioned the he also would like to argue for around 20 minutes, and on which other advocates also came in to mention for argument (Mr. Barun Sinha).

CJI became furious and stated that today is 32nd day of hearing and we will keep on hearing till my last day (retirement day). CJI stated that you may give your written submissions.

ARGUMENT BY MS. MEENAKSHI:

Ms Meenakshi : Massive structure is projected as temple on the basis of conjecture. As per their case there were 85 pillars, out of which 50 exposed, we don't know about unexposed.

Ms. Meenakshi : Read the content from ASI report in regards to Pillars.

She stated that Appendix is controversial as what they said before Hon'bel High Court.

Mr. CSV vehemently objected that. He stated that she is arguing totally different as what is described in ASI report. There were 4 floors found in half of meter.

J. Bhushan: Yes, 3 floors are found in 1 or 2 meter?

Referred page 373, 375 volume 84

J. Bhushan: This is around 1000 years ago, we have to give some margin to them also, and we can't deal in inch and centimeters now at this stage?

Ms. Meenakshi mentioned that ASI always mentioned to 'Chabutara' as 'Ram Chabutara', however, to Mosque they stated as 'Disputed Structure'. ASI is not a party to collect Historical Facts. She stated that ASI had pre - conceived idea of 85 pillars theory, and they finally conjecturized it.

CJI : We got your submissions, different pillar basis are for different period, we have taken not of it, you proceed further.

Ms. Meenakshi argued that Lime Plaster was found, which represent the influence of Islamic era, such plaster was used by Islamic architectures, She gave reference of 'Lime Surkhi' and she said that I will put the state of witness on Lime Surkhi and give it to MyLord. This possible indicates as it was Idgah?

J. Bobde: We have to find out as what is more probable (either Idgah or Temple) on the basis of evidence collected?

J. Nazeer: In Idgah Imam place is found in centre, there is nothing here like that?

Ms. Meenakshi : They didn't permit me to dig in center. It could have possibly been found there.

Ms. Meenakshi argued on the material as what was found by ASI during excavation, she stated that none of the article found belongs to the temple. She stated that ASI remained inconclusive regarding existence of temple? The another question is that whether it was demolished?

Ms. Meenakshi made her submission on circular Shrine (page 41 of her note and page 105 of ASI)

Ms. Meenakshi made her submission regarding 'Makar Pranala' she indicated that there was difference between two photograph of it, taken by ASI, she tried to develop her argument as the found 'Structure' was given the shape of 'Makar Pranala' by ASI itself.

Ms. Meenakshi made her submission on part of sculpture found during excavation (Alingan Mudra) page 167 of volume ASI. She said that she has objection as ASI used word 'Divine' to it.

CJI: You could place your objection under order 26(10)(2), we don't know now.

Ms. Meenakshi made her submission as Lord Shia is also related to Jainism as well as with Hindus, this can be in context of Jain and Budhissim.

Ms. Meenakshi made her submission towards 'Lotus', she said that this 'Lotus' is used by all Hindu, Muslim, Buddhists. This 'Lotus' is found in large number of Muslims Architect in India.

Ms. Meenakshi made her submission towards incorrect periodisation, she stated the report suffers so many inconsistencies and can't be relied upon.

Ms. Meenakshi made her submission on Bones found during excavation, she stated that bones were found at each level of excavation, however, there is no finding towards it, she said that animal bones shows the culture of that period. If animal bones are found in large numbers, it shows that people used to eat animals and this is indicated as 'Vaishnava Temple'.

Ms. Meenakshi indicated para No. 3968 from impugned order.

"3968. In the excavation at the disputed site, the entire collection of animal bones was recovered from the fills of different periods. Evidently, these fills were brought from the neighbouring areas to level the ground from time to time. It is but natural that fills which were brought from habitational deposits contained animal bones, hence their examination will throw light only about the area of their origin. They have no bearing on the nature of the layers of the excavated site".

Ms. Meenakshi also argued on 'carbon dating' technique and 'Thermal' techniques used by ASI as most popular techniques. The carbon dating may make a difference of (100 + -) years, however, thermochronology make difference of (30 + -) years.

: Hearing resumed will begin on Friday::

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