

:: RAM MANDIR CASE ::

ARGUMENT OF MS. MEENAKSHI ARORA (SR. ADVOCATE)

Ms. Meenakshi Arora continued her submissions on Archeological Survey of India and argued regarding layers and floor. She tried to make the court understand the difference between floors and layers in ASI language.

J. Bobde: You show us in the statement of any witness indicating as what's layer and what's floor?

Ms. Meenakshi : I will give it later.

Ms. Meenakshi argued on Sunga Horizon (Second and 1st Century B.C.).

Ms. Meenakshi made her submissions on mother goddess and animal figuring.

J. Bobde: You are going beyond reply as what Mr. C.S. Vaidhnathan argued.

Ms. Meenakshi submitted that we can't say about particular period.

Ms. Meenakshi argued as we don't know as what are the factors / parameters on which conclusion made by ASI.

Ms. Meenakshi made her submission on Divine couple, debris. She said that Government of India Bumad in Bijapur has same shaft and I will place material of it.

Ms. Meenakshi submitted compilation of case law and referred judgments from it on ASI.

Ms. Meenakshi submitted that ASI report is merely an opinion and is hypothetical based upon evidence. She gave an example of Handwriting expert and placed judgment on it. She said that finger prints has more accuracy then signatures.

J. DYC: There may be possible interpretation of it. ASI is a science more than the Handwriting expert.

J. Bobde: Have you any authority (any judicial order) of comparison of ASI with Handwriting or fingerprint.

Ms. Meenakshi stated that I have cited my witnesses / their witnesses in tabular form in my compilation.

J. Bobde: Ok we got it. We will consider it as ASI is not science.

Ms. Meenakshi read the evidences of witnesses such as DW20/5 Retired ASI – Jayanti Pd. Srivastava. R. Nagaswami.

J. Bobde : Both sides are relying on inferences, obviously there is no eye witnesses, we have to find out the reasonable probability of being mosque or temple or any other structure on the basis of evidence?

Ms. Meenakshi submitted that ASI is very week kind of evidence. She refers the judgment on Handwriting.

J. Bobde: Can you ascertain Handwriting judgment with ASI, do you have any judgment on this?

Meenakshi : No

J. Bobde: After hearing certain judgments, we are quite conscious as ASI draws inferences; we will decide the issue on the basis of more valid and reasonable inference.

Ms. Meenakshi made her submission on Reliability of Expert Evidence:

Mr. Dhawan: Verifiability is a test to Science, speculation is not science, he suggested a book to read on this, "Logic of Scientific Discovery"

J. Bobde: noted the name of book.

Ms. Meenakshi argued as ASI is not a piece of substantive evidence.

Ms. Meenakshi argued that ASI report doesn't answer the query post to it regarding demolition, it's only returned with inference. She submitted that ASI is a science more based on hypothesis.

Ms. Meenakshi argued that how ASI draw the conclusion, we don't know that on which parameter they tested the evidence to reach on this conclusion. She said that how the court does returned that it was demolition.

Thereafter Ms. Meenakshi concluded her evidence, by thanking to her team and experts to help her in making her submissions. She sought permission to file W.S. Permission granted.

MR. NAPHDE, SR. ADVOCATE ON RES-JUDICATA

Mr. Shekher Naphde, Sr. Advocate made her submission on res-judicata.

Mr. Naphde read the pleadings of 1885 Suit on page No. 1576 Vol 11.

Mr. Naphde made his submission on Mahant Raghubar Das Suit wherein permission was sought to make construction on Ram Chabutara.

Mr. Naphde emphasized on the part of pleading wherein it was stated the construction of temple on Chabutara will give relief to the worshiper and God.

Mr. Naphde shown the MAPs to the court produced in 1885 Suit.

Mr. Naphde emphasized as disputed structure is shown as mosque in said Suit.

A discussion took place on synonyms of 'Faqueer' or 'Fukra', Justice Bobde mentioned that Nihang Singh Sikh was also called as Faqueer, it was also

discussed as whether Faqueer word is generally used for Muslims or Hindu/Muslims both.

Mr. Naphde referred that Mutawali of Mosque filed an application for impleadment, as originally he was not a party.

As per the order of Trial Court, Hindus were in possession of Ram Chabutara and Suit was dismissed by Trial Court.

The Appellant Court returned with the finding as it is unfortunate but its been long time, creation of construction at Ram Chabutara will create law and order problem, and hence uphold the order of Trial Court.

J. Bobde : Do you have a copy of issue framed in this matter?

Mr. Naphde refers page 760 para 830, issues no. 1 to 6.

Mr. Naphde: In first Suit you claim a small part of property and in later case you claim a full property, then it's a res-judicata.

Mr. Naphde shown the finding of court (page 3026 to 3035) as present Suit 5 is not hit by res-judicata as it's not a representative Suit.

An argument took place on Section 11 CPC.

J. Bobde: Whether a suit filed by a person on his 'bonfide' is binding. A decree in such suit can be obtain by fraud also. We don't know as if this person is instigated by other parties to get a decree ?

J. DYC: Unfortunately he was not able to contest property, it may be due to lack of knowledge, lack of resources, so it's a serious question as whether can we bind the entire community with that?

J. Bobde: In Bombay there was a community, one person filed a suit for declaration and another person within that community opposed that stating that

he is not the representative of the entire community? He indicated that he was a religious leader passed away recently?

An arugement took place on order 1 Rule 8.

It's 12.45 now.

CJI: How much time you would take.

Mr. Naphde: I asked my Lord for two hours, it's only 45 minutes yet.

CJI: We said that we will strictly follow schedule, if it will be argued like that then we don't know. Hearing resumed by 12.45.

:: Hearing resumed will begin on Monday::

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