

::RAM MANDIR CASE::

MR. P.N. MISHRA – FOR AKHIL BHARTIYA PUNURUDAR SAMITI HEADED BY SHANKARACHARYA JI

Mr. Mishra continued his argument on the theory as Babar or Mir Baki did not construct any mosque.

According to Mr. Mishra, he is only the defendant in Suit 4, therefore, it is his duty to demolish the case of plaintiff in Suit 4. He argued on the theory that if he succeed in establishing the fact that the Disputed Structure was not constructed in 1528 by Babar or Mir Baki (as per the plaintiff in Suit 4), in that situation, the very basis foundation of Suit of the plaintiff is gone, and therefore, Suit 4 has to be dismissed.

- Mr. Mishra again argued regarding directions of place of birth of Bhagwan Ram on the basis of Pindaraka, Lomash and Vashist. He described that as per Srimad Skandpuranam enumerates Sarayu (a river), Vishnuhari, Brahmkunda (a Holy Lake), Mantresvara, Chakratirtha (tirtha of holy water), Chakrahari, Dharmahari, Vira, Surasa, Bandi, Sitala, Batuka, Holy-lake in front of Batuka, Mahavidya, Pindaraka, Bhairava, Vighnesvara, Vasistha, Laumas and Janamsthan of Lord of Universe Sri Ram as Tirthas and Devasthanam of Ayodhya and right from the Tretayuga these sacred places are being visited and worshiped according to Scriptural customary rituals.
- Mr. Mishra draws the attention of court towards complaint made by Tahavvar Khan, contractor on 30th April 1936 complaining about certain claims disallowed by the PWD authorities. Tahavvar Khan raised a bill regarding repair of mosque .
- Mr. Mishra shown the translation of Suit No. 29/1995 Suit of Shia Vs Sunni in which court issued direction to record the text of the inscription.
- Mr Mishra read the translation of inscription and other relevant paras as Para No. 1478 on page 1009, para 1482, 1484, 1485, 1486, 1488, 1489, 1499 (from impugned order of J. Aggarwal Volume – I) about Babarnama, Tuzuk I babri, Hijri and also produced a fact that same building was laid down by the King of China and Turkey in the presence of Babar (para 1480)
- Mr. Mishra further indicated para 1511, 1512, 1513, 1514 and 1524 and tried to establish the fact that the said structure was not constructed by Babar. He argued that in the Babarnama it is nowhere mentioned as what happened to Ayodhya and whether Babar actually visited Ayodhya or not, nothing is mentioned about it in the said biography.

- Mr. Mishra argued that Babar was a religious person and deeply indulged in religious activities, had no hatred towards idols, never visited Ayodhya and therefore, he had no occasion to order for construction of any building / disputed building i.e. mosque at Ayodhya. (Para 1524)
- Mr. Mishra read Para 1529, 1530, 1534, 1536, 1563, 1575, 1576, 1577 and 1578 (from impugned order volume I). He tried to establish the fact that Babar did not visited India with an intention to spread Islam but visited with an intention to rule the country. It was argued that most of the emperor who ruled India at that time were followers of Islam with whom Babar fought to set up his empire.
- It was argued by Mr. Mishra that Babur Nama mentioned regarding temple of Gwalior, mosque at Delhi, Agra, Gwalior and other several place but it is true that neither there is mention of demolition of any religious place by Babar in Awadh area nor there is anything to show that he either entered Ayodhya or had occasion to issue any direction for construction of a building in particular a Mosque at Ayodhya.
- Mr. Mishra argued that there is nothing on record to suggest that Baber either entered Ayodhya or gave direction to anyone to construct a Mosque or to demolish a temple as to construct a mosque.
- Mr. Mishra argued that in the entire Babarnama it doesn't mention any name as Mir Baqi or any other person related to Babar with such name.
- In para 1577 Mr. Mishra showcase that it was argued before High Court that if Babar did not visit Ayodhya then who demolished the temple or who constructed the disputed structure. On which Mr. Mishra admitted the fact only to the effect that the disputed structure was not constructed in 1528 AD and there is no such document to this effect.

J. Bbode : Ok we got your argument now we would like to know as what is your positive case, what's your positive theory?

Mr. Mishra : As per their case they have pleaded that it was a mosque, constructed in 1528 by Babar / Mir Baqi, being a defendant it's my duty to demolish their case.

J. Bbode : We follow you as you want to dispute their case, you want to dispute as Mosque was not constructed by Babar / Mir Baqi now we want to hear some positive submissions from you.

Mr. Mishra : May be it was constructed by Aurangzeb, there is no evidence regarding Babar, as per Tiffintheller some says Baber some says Aurangzeb.

J. Bbode : Give us the positive reasons / evidence as according to you why it was constructed by Aurangzeb, plead your positive case, show us evidence.

Mr. Mishra : Referred Ain-i-Akbari regarding "Administration of Akbar", is a 16th-century detailed document recording the administration of the Mughal Empire under Emperor Akbar, written by his court historian, Abu'l Fazl in the Persian language.[1] It forms Volume III and the final part of the much larger document, the Akbarnama (Account of Akbar), also by Abu'l-Fazl, and is itself in three volumes.

- In the Ain-i-Akbari the old city is said to have measured 148 kos in length by 36 kos in breadth, or in other words, it covered the whole province of Audh to the south of the Ghaghra river. The origin of the larger number is obvious. The 12 yojanas of the Ramayana, which are equal to 48 kos, being considered too small for the great city of Ramachandra, the Brahmanas simply added 100 kos to make the size tally with their own extravagant notions. The present city of Ayodhya, which is confined to the northeast corner of the old site, is just two miles in length by about three-quarters of a mile in breadth; but not one-half of this extent is occupied by buildings, and the whole place wears a look of decay. There are no high mounds of ruins covered with broken statues and sculptured pillars, such as mark the sites of other ancient cities, but only a low irregular mass of rubbish heaps, from which all the bricks have been excavated for the houses of the neighboring town of Faizabad.
- Mr. Mishra indicated that three graves are revered by Muslims as the tombs of Noah, Seth, and Job, and the two last are mentioned under those names in the Ain-i-Akbari. Ain-I-akbari refers three graves but escape such a big structure / mosque, however it mention Ram Janam Bhoomi.
- The said book was written by Abu Fazal and composed in 1576.

Justice D.Y. Chandrachud: Show us the documents in support of your case, one by one, so that we may proceed further?

- Mr. Mishra referred Niccolao Manucci (19 April 1638–1717) was an Italian writer and traveler. He wrote a memoir about the Indian subcontinent during the Mughal era. He indicated para 3497 as follows:
"3497. A large number of books including Gazetteers, Travellers Account of William Finch, Niccolao Manucci, William Irvin, the books written on Babar, Architecture etc. were placed by Sri Mishra before us. He also refers to the Muslim religious literature in this regard including Holy Quran; Sahih Bukhari's Hadith; Sahih Muslim; Tirmidhi; Books of Mohammedan Law by Amir Ali, Mulla, Faizi, Baille to show that neither the mosque could have been constructed in the given circumstances at the disputed site nor it is so permissible nor was in accordance with muslim law, therefore, the suggestion that the disputed building was a formerly constructed 'mosque' is absolutely incorrect and contrary to law including Shariyat law".

- Mr. Mishra referred to various gazetteers and documents on record including Exhibit 17 (Suit-1), Exhibit 18 (Suit-1), Exhibit 20 (Suit-1) and Exhibit 30 (Suit-1) that throughout Hindus have remained in continuous possession and doing worship at the place in dispute, there was never a mosque, it was never used as mosque, it was always used as temple by Hindus, possession of muslim, if any, ceased in 1934; and no Namaz ever was offered after 16.12.1949; and, in the circumstances, it cannot be said that the disputed place is not "birthplace of Lord Rama". The building in dispute could not have been said to be a mosque..

Dr. Dhawan: Objected as Niccolao Manucci was not exhibited before court below but was referred during argument so he raised objection regarding maintainability of it?

Mr. Mishra: Such reference was made u/s 57 of evidence Act, which empower the court to make judicial note. He by reference s. 57, stated that court passed specific order in this regard, therefore, such books were produced in compliance of such order.

LUNCH

After Lunch Mr. Mishra referred and read para no. 1616, 1617, 1618, 1619, 1624, 1631, 1632, 1633, 1634, 1640, 1642, 1648, 1655, 1657, 1659, 1660.

- Mr. Mishra pointed out that Abul Fazal Allami has referred to "Ayodhya" and its religious importance for Hindus and also certain religious places of Muslims. Therefore, it is improbable that he would have missed or ignored to mention about a grand mosque constructed by grandfather of Emperor Akbar though has mentioned about other places of Ayodhya. This shows that till the date when the aforesaid work was written by Abul Fazal, uilding in dispute had not came into existence and it is incorrect to suggest that it was constructed in 1528 AD. He explained that this is the reason why we do not find any such mention in the work of Goswami Tulsidas, a great follower of Lord Ram.
- Mr. Mishra also referred to the two footnotes one of which is with respect to Ram and another with respect to Sant Kabir and read as under :

"The 7th avatar, who in this capital of the solar dynasty founded on the chariot wheel of Brahma, consummated the glories of sixty generations of solar 1746 princes and as the incarnate Rama, i.e. the hero of the famous epic that bears his name." (Page 182)"

- Mr. Mishra argued regarding transportation of inscription from one place to another and affixing the same to raise the claim with respect to building on the basis of certain facts, which actually did not exist, he pointed out that this kind of practice has been noticed on various occasions.

Mr. Mishra read para 1678, 1679 and 1680, 1681, 1682 finding of J. Aggarwal.

Paras are mentioned below for ready reference:-

1678. In the light of the above we do not find that either the Government of India's White Paper published in 1993 or various gazetteers, merely for mentioning one or the other facts, can be taken to be correct on its face value unless corroborated with cogent evidence.

1679. In the above facts and circumstance, it is difficult to record a finding that the building in dispute was constructed in 1528 AD by or at the command of Babar since no reliable material is available for coming to the said conclusion. On the contrary the preponderance of probability shows that the building in dispute was constructed at some later point of time and the inscriptions thereon were fixed further later but exact period of the two is difficult to ascertain.

1680. The onus to prove lies upon the party who has pleaded these facts. We have no hesitation in saying that these parties have miserably failed to discharge this burden.

1681. In the absence of any concrete material to show the exact period and the reign of the concerned Mughal emperor or anyone else during which the above construction took place, we are refraining from recording any positive finding on this aspect except that the building in dispute, to our mind, may have been constructed much later than the reign of Emperor Babar and the inscriptions were fixed further thereafter and that is why there have occurred certain discrepancies about the name of the person concerned as also the period. The possibility of change, alteration or manipulation in the inscriptions cannot be ruled out.

1682. It is a matter of further probe by Historians and others to find out other details after making an honest and independent inquiry into the matter. The three issues, therefore, are answered as under:

(A) Issue no.6 (Suit-1) and Issue No.5 (Suit-3) are answered in negative. The defendants have failed to prove that the property in dispute was constructed by Shanshah/Emperor Babar in 1528 AD. Accordingly, the question as to whether Babar constructed the property in dispute as a 'mosque' does not arise and needs no answer.

(B) Issue No.1(a) (Suit-4) is answered in negative. The plaintiffs have failed to prove that the building in dispute was built by Babar. Similarly defendant no.13 has also failed to prove that the same was built by Mir Baqi. The further question as to when it was built and by whom cannot be replied with certainty since neither there is any pleading nor any evidence has been led nor any material has been placed before us to arrive at a concrete finding on this aspect. However, applying the principle of informed guess, we are of the view that the building in dispute may have been constructed, probably, between 1659 to 1707 AD i.e. during the regime of Aurangzeb.

Mr. Mishra read following Major religious divisions in Islam

- Dar al-Islam
- Dar al-Harb
- Dar al-'Ahd, Dar al-Sulh

* **Mr. Mishra argued that Islam is a liberal religion, there is misconception about it. There is misconception about Islamic law. Islam is much more liberal as it is propagated today. He argued that Jizya (tax on non muslims) was 50% only, and today also we pay around 40% taxes. There is nothing like cruelty in Islam. He argued that Islamic king was changed was Islamic king so what used to transfer is, only the right to collect tax, nothing else, people used to live their life in the same manner.**

J. Bobde : Whether there was change or no change in Islamic regime, you tell us how the mosque losses its characteristic?

Mr. Mishra : So far as present place in dispute is concerned the 'Wakif' must be the owner of the land, he should have absolute title, unless the land is property acquired.

- Thereafter court made some discussion on limitation, Mr. Mishra stated that since period of Babar i.e. from 2nd Feb 1856 Islamic Hanifa Law was in force, therefore, question of limitation does not arise. Then Mr. Mishra argued that it is settled law by this court that due to limitation right to transfer (court interfered stopped Mr. Mishra in between)

CJI: Put up a question as what do you want to argue now, please indicate:

Mr. Mishra : Character of Mosque, Waqf, Wakif, Amendment, Revenue Record, Several Books... etc... (CJI stopped him by hearing such vast material to argue)

CJI: Again put up a question regarding Amendment of Suits, he indicated registry to show him the original amendment. He asked the order of High Court allowing amendment.

CJI Checked Original Plaintiff.

CJI : What do you say about Revenue Record.

Mr. Mishra referred page 4267 Vol III

CJI : We want to show the Original Revenue Record, you please tell the court master in next 10 minutes. Court resumes.

Further argument will continue by Mr. P.N. Mishra on Thursday.

**Notes Prepared by:
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