

HEARING DATED: 29.08.2019

::RAM MANDIR CASE::

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

Mr. Mishra commenced his argument and read the order of Hon'ble High Court regarding acceptance of books wherein Hon'ble High Court hold that that such books can be taken on record by virtue of power u/s 57 of Evidence act, and allowed the application of present respondent.

Thereafter Mr. Mishra shown the finding of all three judges on the issue whether the said structure was constructed by Babur in 1528.

Justice Aggarwal:

Para 1678 - 1682

(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.

J. S.U. KHAN

relevant page 92, 105, 106, 115 (Agreed with J. Aggarwal)

Page 92 : Hence on the basis of these inscription alone it can't be held that either the building was constructed by or under order of Babur or it was constructed in 1582. In this regard detailed reasons are given by my brother J. Aggarwal with which I full Agree.

Page 106 : Muslims have not been able to prove that the land belonged to Babar under whose orders the mosque was constructed. Similarly Hindus have not been able to prove that there was any existing temple at the place where the mosque was constructed after demolishing the temple. It has also not been proved by the Hindus that the specific small portion i.e. premises in dispute of 1500 square yards was treated, believed and worshipped as birth-place of Lord Ram before construction of mosque. In such situation when both the parties have failed to prove initial title, (commencement of title) it is possession and possession alone which decides the question of title in accordance with Section 110, Evidence Act.

Page 115 : GIST OF FINDINGS (J. S.U. Khan)

1. The disputed structure was constructed as mosque by or under orders of Babar.
2. It is not proved by direct evidence that premises in dispute including constructed portion belonged to Babar

Judges noticed that in Gist of Finding there is contradiction, however, if we read the finding of S.U. Khan in entirety then he goes with J. Aggarwal meaning thereby that Plaintiff in Suit 4 were unable to prove that the said structure was constructed by Babur or Mir Baki in 1528.

## **J. SHARMA**

### **ISSUES NO.1 & 1(a)**

1. Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as claimed by the plaintiff ? If the answer is in the affirmative?

1a. When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant no.13 ?

#### Finding (page 3243)

I have referred in detail that on the basis of revenue records also and other documents, it can conclusively be said that Janmsthan was taken into consideration. Thus, on the basis of the opinion of the experts, evidence on record, circumstantial evidence and historical account from all or any angle, it transpires that the temple was demolished and the mosque was constructed at the site of the old Hindu temple by Mir Baqi at the command of Babur. Issue Nos. 1 and 1(a) are decided in favour of the defendants and against the plaintiffs.

J. Bobde : As per our understanding you are raising these 3 issues

- (1) Whether the structure was constructed by Babar/ Mir Baki in 1528.
- (2) Whether it the structure had characteristic of mosque
- (3) Whether it was dedicated to not to Waqf

Mr. Dhawan: Raised objection as he is arguing out of exhibits and record of case, this is 24<sup>th</sup> time.

Mr. Mishra: I am arguing my case on the basis of documents only, I was just giving a brief introduction as what I was going to argue, everything is on record (and showcased from the record what he was submitting). He says that Mr. Ld. Friend only interrupt me.

## MR. MISHRA ARGUED IN DETAIL REGARDING CHARACTERISTICS OF MOSQUE

Thereafter Mr. Mishra argued on characteristics of Mosque. According to Mr. Mishra Disputed structure was not a mosque due to following reasons:

- No place for Vaju
- No Minarets
- The property was never dedicated to Allah
- Kasuti Pillars and other Hindu Symbols were found
- As per Muslim Law Mosque should be situate at peaceful and quite place, no sound of bells should be there.

Mr. Mishra referred and read the evidence of expert witness such as PW 10, Mohd. Idris; PW 11, Mohd. Burhanuddin; PW 19, Maulana Atiq Ahmad; PW 22, Mohd. Khalid Nadvi; PW 25, S.M.Naqvi; and, PW 26, Kalbe Jawwad particularly on the issue of characteristics of mosque.

PW 10, Mohammad Idris, claims to have appeared as an expert in religious matters stating "A building built on somebody's land by force will not be a mosque. So, there is no question of its being legitimate or illegitimate. Demolishing any place of worship is forbidden in Islam. So, there is no question of breaking the same and building a mosque instead. If the debris of any fallen temple is sold by its owner, then there is no prohibition on building a mosque by purchasing such materials.

Such submission were made by the other expert witnesses also on other issues.

Following are the other relevant portion came out from the evidences of these expert witnesses:

- Whatever is given in the Waqf must be hold by its owner or owner should have title of whatever he is giving to Waqf.
  - Islam does not permit to demolish any temple.
  - If the property belong to non Muslim then Mosque will be illegal.
  - Vaju is essential if there is availability of water.
  - Only the owner of the land can give it in 'Waqf'. 'Hadis' speaks of the face and shape of the mosque. A famous book on 'Hadis' is 'Mishkat Sahrif'.
  - If an Imam has the knowledge that pictures of animals and birds, or idols, or statues of human beings, or straight or crooked images or representations of any women are engraved in any structure , he will try to remove such engraving before the recital of namaz. But if he does not do so even then the namaz will get offered. If the Imam does not try to remove this types of pictures and shapes, it will be a crime on his part.
  - A mosque may be built even at a graveyard, provided that there lies no grave at the place where such mosque is being built.
  - A mosque can be built over a land only when its legal owner voluntarily donates the land for the same.
  - Islam does not permit the demolition of any temple. We would not demolish any temple and build a mosque. If idols have been installed in the temple, then would not damage the idols as well.
  - A mosque never ceases to exist after it is built. If a mosque has come into existence, then it will always be treated as a mosque even if namaz is offered over there or not.
- Mr. Mishra argued and submitted before the court that there are five kinds of 'Ahkam' (ordain) of 'Shariyat'- 1. 'Farz' (duty), 2. 'Haram' (forbidden act), 3. 'Makruh' (undesirable), 4. 'Mandub' (representative/ delegate), 5. 'Jayaz' (justified/legal).

- Mr. Mishra argued that for the purpose of a Waqf, valid in Shariyat Law, one must satisfy the following requirements:
  - i. The land must belong to Waqif.
  - ii. There must be dedication which is permanent.
  - iii. For a public waqf, the delivery to Mutawalli or anyone else on his behalf.

The above factors have been enumerated on a careful reading of the books of Sharii, as also the relevant authorities on the subject, noticed above.

- It is necessary to purchase the land if you are not the owner of land before constructing a Mosque Mr. Mishra read the relevant portion Regarding payment made by Shahjahan for acquiring land to construct Taj Mahal, it is stated that there existed a house built by Raja Maan Singh succeeded by Raja Jai Singh and therefore pursuant to an agreement certain other properties was transferred to him in lieu of the aforesaid land. \*(book "Tajmahal, the Illumined Tomb")
- Mr. Mishra showcase the relevant finding on Firman dated 28th December, 1633 to Raja Jai Singh.
- Mr. Mishra argued on Haneefi, referred a book Book 'A Digest of Mahommedan Law' Written by Neil B.E. Baillie containing the doctrines of the Hanifeea Code of Jurisprudence. According to Mr. Mishra this Hanifeea code was in effect at the time of construction of Mosque and as per the said code there was no limitation period, hence, no limitation period applies on construction.
- In the book 'Ibn Battuta Ki Bharat Yatra' Ibn Battuta writes that he was given fund and permission by Sultan Muhamad bin Tughlaq for purchasing 20 villages for the purpose of increasing income of the endowment of Mausoleum of Sultan Kutubuddin. From said fact it becomes crystal clear that the Sultan was not owner of the land of the

subject people and he had to purchase land for accretion of said wakf property.

- According to Shar the Wakif must be owner of the property at the time of its dedication otherwise Wakf is invalid. As Emperor Babur was not owner of the Suit-land, alleged creation of Wakf for Masjid and Graveyard was ab initio void and the Plaintiffs are not entitled for the reliefs as prayed for in the instant Suit.
- Mr. Mishra read and referred several Hadees
- Mr. Mishra argued that In his book 'Digest of Moohummudan Law' (first part) Neil B. E. Baillie writes that wakif or appropriator must be owner of the subject of the wakf at the time of making it and if a person usurp a piece of land, create wakf and then purchase it from the owner, it would not be a wakf. And if Zimmee gives his mansion for using it as a masjid for Mussulmans, after his death it would become the inheritance of his heirs.
- In his book 'Principles of Mahomeddan Law' D.F. Mullah writes that wakif must be owner at the time of dedication. Relevant extract from page 149 of the said book reads as follows:

"146C. Subject of wakf must belong to wakif.— The property dedicated by way of wakf must belong to the wakif (dedicator) at the time of dedication (s)."

### **MR. MISHRA REFERRED FOLLOWING CITATIONS/AUTHORITIES:**

In **AIR 1994 SC 2663 (N. Nagendra Rao & Co. v. State of Andhra Pradesh)** the Hon'ble Apex Court has held when the law provides for compensation against confiscation, he must be compensated and confiscation cannot affect the right of owner to claim return of the goods.

In **AIR 1971 SC 1594 (Union of India. v. Sudhangshu Mazumdar)** the Hon'ble Apex Court has quoted an extract from the **United States v. Juan Prechman, (1831-34) L.Ed. 604** with approval wherein it has been stated that the modern usage of nations would be outraged if private properties are confiscated or private rights annulled.

In **1999 (4) SCC 663 (R.E.M.S. Abdul Hameed v. Govindaraju)** the Hon'ble Apex Court has held that under the Ancient Hindu Law there were two beneficial interests in land: (1) that of the sovereign or his representative, and (2) that of the cultivator or Ryot holding the land. The Ryot's right arose from occupation of the land, thus the grant of an Inam do not and could not have touched the cultivator's right in the land, except in rare cases where the grantor also hold the cultivator's interest at the time of the grant.

In **AIR 1962 SC 342 (Sunka Villi Suranna. v. Goli Sathiraju)** the Hon'ble Apex Court held, where there was no evidence to show that the occupation of the lands by the Ryot commenced under the Zamindar and there was no evidence as to the terms at which the Ryots or his predecessors were inducted in land, commencement of the tenancy and the terms thereof were lost in antiquity but the Ryot's rights and his descendants were proved to have continued in possession of the land uninterruptedly till the enactment of the Madras States Land Act, 1908.

In **(2001) 4 SCC 713 (Syndicate Bank. v. Prabha D. Naik)** the Hon'ble Apex Court has held that the Muslim jurisprudence neither recognised prescription nor limitation.

In **AIR 1968 SC 683 (V. D. Dhanwatey. v. Commissioner of Income Tax, M. P., Nagpur & Bhandara)** the Hon'ble Supreme Court held that while interpreting an ancient text, the Courts must give them a liberal construction to further the interest of the society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions.

➤ Mr. Mishra Shows the following finding of Justice Aggarwal in para 3389:

*3389. We do not agree. The position of Babar, in our view, was that of independent sovereign, Sole Monarch, having paramount power. It was Supreme, uncontrollable and absolute, not answerable to anyone. Whether invader or anything else, the fact remains that he had been the supreme authority in the territory which he conquered. Nobody could have questioned him.*

- Mr. Mishra argued that the Sacred Compilation Hadith Sahih Bukhari 3.628 reveal that the Holy Prophet has strictly commanded to avoid oppression. Said Hadiths read as follows:

*"Narrated Ibn `Abbas: The Prophet sent Mu`adh to Yemen and said, "Be afraid, from the curse of the oppressed as there is no screen between his invocation and Allah."*

Thereafter Mr. Mishra referred para 3398 of J. Aggarwal recording as follows: -

*The disputed structure, after its construction, came to be known as a 'mosque' as is evident from the earliest documents available to us i.e. Tieffenthaler Travel Account published in 1786 etc. He, however, does not mention anything about worship on the place in dispute by Muslims and on the contrary did not fail to mention that Hindus in fact used to visit thereat and offer worship by lying prostrate on the ground and having three Parikramas. He also noticed presence of Vedi, which Hindus used to worship in the premises of the disputed site. It continued to be so recognized as also the worship by Hindus till the riots of 1855 took place.*

Mr. Mishra vehemently argued that in today's era Muslims are offering Namaz in open, i.e. at Parks- at Road so as per the argument of Muslims such Parks - Roads should have become Mosque.

He argued that such things are contrary to tenets of Islam.

J. Bobde : Court can't say we can't decide it. Court may say that there is no evidence but court can't say we can't decide it.

Mr. Mishra : Yes, Courts decisions are there.

Mr. Mishra argued that there is no evidence that anyone offered Namaz before 1934. In 1934 some part of it was demolished and it was re constructed. Thereafter, mosque always remain closed. Prayers used to be offered only for Friday, and it used to open for (2-3) hours only on Friday. As per Islamic Authority Namaz should be offered at least 2 times in a day. On this parameter also, this is not a mosque.

Justice D.Y. Chandrachud : Any evidence of opening it only for 2-3 hours on Friday.

Mr. Mishra : yes, I will give it to you.

Mr. Mishra further argued that Hindus were offering prayer since time immemorial and it is undisputed, impeachable, however, Muslims were offering Namaz only on Friday.

It's 4.00 PM

CJI: You will finish it tomorrow in 1 Hour.

Mr. Mishra: I will finish by 1.00 pm or I will stop at any point of time as My Lords Indicate.

CJI: You finish, and then Mr. Hari Shankar Jain will argue, we are expecting the other side will start tomorrow till lunch. Mr. Dhawan, be prepared accordingly.

Mr. Dhawan: Let them argue with each other first.

CJI : Mr. Dhawan: If this side finish by tomorrow, be prepared.

Mr. Dhawan: I would prefer to start on Monday.

CJI: Ok.

As per above discussion further argument will continue by Mr. P.N. Mishra on Friday either for 1 hour or till lunch, then Mr. Hari Shankar Jain will argue.

Notes Prepared by:  
Amit Sharma, Advocate