

**HEARING DATED: 30.09.2019**

**:: RAM MANDIR CASE ::**

**MR. NAPHDE, SR. ADVOCATE ON RES-JUDICATA**

After doing some miscellaneous cases, bench assembled at around 11.15am and Mr. Shekher Naphde, Sr. Advocate continued his argument on res-judicata. Following are the highlights of argument of Mr. Naphde.

- Mosque and Chabutara are accepted position and admitted facts need not to be proved.

J. DYC: Being Mahant is not enough he has to specifically plead such issues in the representative capacity on behalf of all Hindus as being pleaded by Nirmohi Akhara?

Mr. Naphde: It's a suit on behalf of Hindus/ worshipper, he claims being Mahant, this fact is not disputed, and this fact itself prove that he filed this suit in representative capacity.

J. DYC: This fact is not disputed by Muslims.

Mr. Naphde : The suit was proceeded only on the basis as he was Mahant.

J. Bobde: Can this Mahant be said as sole representative of all Hindus, merely because Muslims did not controvert.

Mr. Naphde: Read para no. 946 from impugned order. He himself described him as Mahant. Muslims can't say as you don't have locus. It was the State as well as other private defendant's who could say this.

J. Bhushan : This Mahant never claimed in capacity of Mahant, he doesn't refer Nirmohi Akhara.

Mr. Naphde: It's a mere change of name, you kindly see plaintiff. Mr. Naphde referred cause title, Mahant, Janamesthan (Para1), Plaintiff is a Mahant. He said that these all pleadings satisfy that he is a Mahant.

J. Bobde: He doesn't claims to be the representative of Hindus as well as Nirmohi Akhara? How can this person claim bind everyone?

Mr. Naphde: He says that he is Mahant. Mahant of a Math is always representative of worshipper.

J. Bobde: What would be happen in a situation if a Mahant consented something with the rival parties, if such allegations are like that.

Mr. Naphde: We have come across the cases wherein MyLord has said that you are bind by our earlier decision. It's a simple question as Mahant represent to whom, Mahant represent Math.

Mr. Naphde thereafter argued CAUSE OF ACTION:

Mr. Naphde said that Cause of Action is same between 1885 suit and 1989 Suit, it doesn't make any difference as who was representing earlier and now.

Mr. Naphde said that in both the suit it is similar that both says that there was a temple, we need to construct a temple, therefore, the ingredient are same in both.

Mr. Naphde read para 791and 792 of impugned order.

Mr. Npahde argued plea of constructive resjudicata.

Mr. Naphde argued that parties are same as both the parties represent all the Hindus.

The title claimed is same. Earlier a portion was claimed and now the entire land is claimed.

Mr. Naphde argued as cause of action is same.

ESTOPPLE:

Thereafter Mr. Naphde argued on estopple.

By referring his notes, he said that Hindus are barred by earlier decision.

He argued that in the earlier decision it was said that Mosuqe exist at the site.

Hindus had limited right, now they are increasing their rights.

The site plan attached to the suit show the Chabutara and Mosque, both these documents bind Hindus on account of principle of estopple.

ARGUMENT BY NIZAM PASHA ON THE VALIDITY OF MOSQUE:

Argument were made by Mohd. Nizamuddin Pasha, advocate on the validity of Mosque.

Mr. Pasha argued that court should refrain from examining the theological basis of historic act as that would lead to absurd result.

He argued that it can't be seen in judicial review as before 500 years whether Baber constructed Mosque or Aurangzeb.

Mr. Pasha argued as sovereignty of a country is not based on Quranic Law.

Baber did not answer to any authority, Quran is not a law, it's not recognized in any sovereign country as source of law.

J. Bobde: You tell us as what would be the consequence if we go into that?

Mr. Pasha: it's not for a believer to kill anyone by mistake, the title is always governed by Law of Land, the title is not determined by Shariyat.

Mr. Pasha refered the relevant portion of Quran wherein it is stated that, "follow the law of land"

He argued that if Babur did any act against the Shariyat, then the same could not have been challenged at that time, because he was the king. If that could not have been challenged at that time, how can this be challenged now.

Mr. Pasha submitted on importance of Vaju and taking bath on Friday.

Mr. Pasha argued on architect of Mosques.

CJI: It's not necessary to go into all this, leave it.

Mr. Pasha shown the picture of mosque without Minarets, which were objected by CSV stating as these all were not part of records.

J. Bobde: These all pictures are not part of records.

J. Nazeer: Indicated that there are some witnesses who themselves stated that Minarets are not required in a mosque.

CJI stated that no such material is exhibited and asked him to concluded the hearing, he said that he will take 20 more minutes after lunch.

MENTIONING BY MR. JAIDEEP GUPTA, MR. BARUN SINHA, AND MR. CSV:

Mr. Jaideep Gupta sought the permission to file Written Submission which was strongly objected by Mr. Rajeev Dhawan. Mr. Jaideep Gupta stated that person who installed the Idol in Mosque in 1949 is entitled to Shebait.

CJI : At this stage we can't say, we will see it in the end.

Mr. Dhawan: Its' 32<sup>nd</sup> day, he can't come at this stage.

Mr. Barun Singh : Sought permission to file W.S.

CSV: Mentioned regarding circulation of letters, refusing mediation.

CJI: We are in between of hearing of case, we will proceed with the hearing.

**:: LUNCH::**

MR. PASHA MADE FURTHER ARUGEMENT:

What Babur committed could be a sin if it is wrong as per Islamic Law.

Nazeer: Asked him to see and read page 598 of impugned order and stated that all this being mentioned in oral evidence.

Mr. Pasha read the oral evidence from impugned order.

J. Bobde: According to this witness, is it correct that a part of land (without construction) can be a land.

Mr. Pasha: Yes

Mr. Pasha argued that if people of other religion perform Pooja / Worship then also it remain mosque, he said that implementation of such Islamic law is not possible in our country.

Mr. Pasha made submission regarding grave around mosque he said that you can't offer Namaz facing grave.

He argued that since Mir Baki was from Tashkand therefore, he is referred as Tashkandi in Babur-nama.

Mr. Pasha indicated some translation mistakes and argued on it, he said one mistake in Urdu make 'Juda' from 'Khuda' on which CJI stated that why don't you give us correct translation, pointing incorrect one.

CJI: Directed him to conclude, and kept the file.

MR. PARASARA IN REJOINDER IN SUIT 5

MR. Parasan commenced his argument and stated that I will argue on "Swyambhu" and "Res-judicata", he said that he will make brief submission and CSV will supplement it.

Mr. Parasaran argued on concept of Land and juristic personality as per Hindu Law.

Mr. Parasaran referred the observation of Bombay High Court in this regard and thereafter referred several judgment of this Hon'ble Court.

Mr. Parasaran during his argument referred following:'

- Religious Aspect
- Religious Practice
- Religious Parameter

Mr. Parasaran took the court through the journey of Hindu Law and stated that what taught by Rishi's used to be followed by people and then it became as Custom and then Tradition and it finally became 'Law'.

Mr. Parasaran said that all in one and one in all is Hindu Religion. And he argued on worship.

Mr. Parasaran told the meaning of 'Ramayana'.

While making his submission on juristic person Mr. Parasaran stated concept of deity emerge as 'Deity Manage itself' and it finally became as juristic person. Mr. Parasaran gave example of Kashi Vishwanath temple.

Mr. Parasaran argued on Swyambhu he said that there are we can categorized in two category.

- (i) Naturally comes out
- (ii) Worshipped because of some important. He said that Ram Janam Bhoomi became Swyambhu because of birth of Lord Shri Ram. Birth of God made it Swyambhu.

Mr. Parasaran made his submissions as place can also become Swyambhu.

Mr. Dhawan: I object to it, he said that pictures are not admissible, because it was not the part of record, therefore, examples are also not admissible. He said that My Ld. Friend is not here as expert, he is here to reply of reply.

Mr. Parasaran: What I argued was in context of reply of reply in Suit 5. He said that the approach as, since findings in impugned order are in my favour, and therefore, I don't reply, is wrong.

Mr. Parasaran further stated that I am only arguing concept of Swyambhu and Deity. He said that Birth of Lord Rama is also a concept. He said that I gave example only to understand it, if I am making nonsense arguments, kindly reject it. He also said that I sought permission of My Lord, before interrupting, if I interrupted on any occasion. He also said that if I am arguing anything out of book of record, kindly reject it.

Mr. Parasaran argued as a thing become holy (Sanctity) comes because of faith and belief.

Mr. Parasaran said that Math are public institutions. He argued on image, themes and Idols.

J. Bobde: Why it is necessary to attribute a divine character to a juristic personality.

Mr. Parasaran: 'The Deity' as an object has certain right as well as certain liability. He further replied that ordinary people don't able to concentrate therefore, they need an object like idol or something to concentrate.

#### **::4.15::**

Mr. Parasaran argued as some of the aspects are covered and divinity and Swyambhu.

Mr. Parasaran argued that there are some rights as well as some obligation on behalf of deity, and therefore, it becomes a juristic personality.

Mr. Parasarn stated that Lord is only one.

Mr. Parasaran further argued on 'juristic personality', dignity and worship.

Mr. Parasarn argued regarding different form and shape of deities.

Mr. Parasarn showcased the journey of Hindu Law, case by case.

Mr. Parasaran argued on right of believer. He also said that 'Ramayana' and 'Mahabharata' are epic of nation.

Mr. Parasaran argued that Divinity, after a period of time become sacred and holy.

Mr. Parasaran stated that I will argue only:

"Res-judicata"

"Limitation"

"Cause of Action"

Mr. Parasaran made his submission as divinity was in a piece of land, because of faith of people as Lord Ram took birth here. He further said that divinity is shapeless, and formless.

**:: Hearing resumed will begin on Tuesday::**

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