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**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 10866-10867 OF 2010**

**IN THE MATTER OF: -**

M. Siddiq (D) Thr. Lrs.

... Appellant

**VERSUS**

Mahant Suresh Das &Ors. etc. etc.

... Respondents

**AND**

**OTHER CONNECTED CIVIL APPEALS**

**SUMMARY NOTE ON OOS 4 OF 1989**

**BY DR. RAJEEV DHAVAN, SENIOR ADVOCATE**

ADVOCATE ON RECORD: EJAZ MAQBOOL

<p>I. <u>GRANTS</u></p> <ul style="list-style-type: none"> <li>○ <u>Extract of Register Mafiat:</u> <ul style="list-style-type: none"> <li>• Government order dated 29.06.1860 showing that Rs. 302-3-6 was granted by Nawab Asifuddaula.</li> <li>• Grantor being Baburshah and Grantee as Maulvi of Masjid Babri.</li> <li>• Certificate of grant.</li> <li>• Order by Deputy Commissioner, Faizabad regarding approval of land selected for Masjid.</li> </ul> </li> <li>○ <u>Rent free land:</u> <ul style="list-style-type: none"> <li>• Letter dated 25.08.1863 regarding grant of rent free land near Ayodhya. Later, there were compliance order of this letter dated 09.09.1863, 16.09.1863 (Sholapuri and Bahoranpur mentioned).</li> <li>• Letter dated 06.09.1863 by Financial Commissioner, Oudh regarding selection of approval of land.</li> <li>• In 1864, British granted revenue-free land in Sholapur and Bahoranpur instead of cash grant (Nankar)</li> <li>• Nakal Bataur Sanad where possession of Masjid was given to Yabinda Muawza in lieu of cash grant endorsed earlier.</li> <li>• Order of Deputy Commissioner regarding land revenue.</li> </ul> </li> <li>○ <u>British Government- Grant (1870)</u> <ul style="list-style-type: none"> <li>• Fresh land in Muafi in village of Bhuranpur and Sholapur.</li> <li>• Settlement Officer directed payment of annual endowment-grant for Mosque.</li> <li>• Muhammad Asgar and Muhammad Afzal got decreed in their favour- Revenue record shows them as superior proprietors and possessors.</li> </ul> </li> </ul> <p>II. <u>DISPUTES &amp; CASES AFFIRMING POSSESSION &amp; TITLE</u></p> <ul style="list-style-type: none"> <li>○ <u>Sikhs (1857)</u> <ul style="list-style-type: none"> <li>• Till 1857 there was no whisper and/or demand of Ram Janam Bhumi within Babri.</li> <li>• Chabutra was illegally constructed for the first time</li> <li>• Hawan and puja of Guru Govind Singh. And erection of a symbol of Sri Bhagwan.</li> </ul> </li> <li>○ <u>Complaint Case 1: (Case No. 884 - Eviction of Nihang Singh Faqir from Masjid premises):</u> <ul style="list-style-type: none"> <li>• Complaint by Moazzin of Masjid about installation of Nishan by Nihang Fakir, Chabutra, idol and ditch was dug and 'Ram' was written with coal within Masjid compound.</li> <li>• His Eviction order</li> <li>• Report that Faqir was evicted and flag was uprooted.</li> </ul> </li> <li>○ <u>Complaint Case 2: (Case No. 223 filed on 05.11.1860 by Mir Rajab Ali)</u> <ul style="list-style-type: none"> <li>• Relief that Chabutra be demolished.</li> <li>• Application by Mohammad Asgar and Rajjab Ali regarding illegal occupation and chabootra.</li> <li>• Subedar's report stated that Imkani Singh evicted and hut demolished.</li> </ul> </li> <li>○ <u>Bairagis (part of Case No.2 already decided on 18.03.1861)</u> <ul style="list-style-type: none"> <li>• Complaint by Mutawalli against illegal construction of Kothri Chabutra and placement of idols.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ <u>Case 3: (Niyamat Ali and Mohd. Shah v. Gangadhar Shastri)</u> <ul style="list-style-type: none"> <li>• Order passed by Major Reed, Faizabad where the existence of Masjid has been recorded. (This case concerned encroachment by Ganga Dhar of north-west corner of Masjid.)</li> </ul> </li> <li>○ <u>Case 4: (Mohd. Asghar v. Government)</u> <ul style="list-style-type: none"> <li>• Complaint by Mohd. Asghar to evict Faqir from trees, Khandal and graveyard</li> <li>• Claim over tree of Tamarind was decreed.</li> <li>• Plot No. 163 was Jama Masjid.</li> <li>• Appeal by Asghar for placing of idol</li> </ul> </li> <li>○ <u>Case 5: (Mohammad Asghar v. Mahant Baldeo Das- order passed to remove image/idol)</u> <ul style="list-style-type: none"> <li>• Direction to Baldeo to remove idol.</li> <li>• Permission to open door on the wall of Babri Masjid could not be given.</li> <li>• Written order to Baldeo to remove the image placed on platform.</li> </ul> </li> <li>○ <u>North Gate (Singh Dwar) - Case 6: (Re: Mohd. Asgar v. Khem Dass)(1877)</u> <ul style="list-style-type: none"> <li>• Protest on opening of Northern gate.</li> <li>• Report stating second door has been opened for ease of access as human life endangered due to great rush.</li> <li>• Case dismissed as opening of gate was in the interest of public safety.</li> </ul> </li> <li>○ <u>Case 7: (Mohd. Asghar v. Musamma Humaira Bibi and Sunder Tiwari &amp; ors. 1878)</u> <ul style="list-style-type: none"> <li>• Decree in favour of Mohd. Asghar regarding 3/8<sup>th</sup> part of Zamindari rights.</li> </ul> </li> <li>○ <u>Case 8: (Mohd. Asghar v. Raghubir Das Mahant and Nirmohi Akhara)</u> <ul style="list-style-type: none"> <li>• Asghar claimed rent for Chabootra and Takht at the occasion of Ram Navmi.</li> <li>• Restraint orders for construction of Chabootra.</li> <li>• Decree in favour of plaintiff (Asghar)</li> </ul> </li> <li>○ <u>Case 9: (Mohd. Asgar v. Mahant Raghubar Das Case No. 19435)</u> <ul style="list-style-type: none"> <li>• Entitlement for white wash.</li> <li>• Restrain orders to Raghubir to carry out repair works.</li> <li>• Suit decreed in terms of compromise admitting the existence of Babri Masjid on western boundary.</li> </ul> </li> </ul>
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<p><b>III. 1885: SUIT TO CONSTRUCT TEMPLE ON CHABUTARA DISMISSED</b></p> <ul style="list-style-type: none"> <li>○ SUIT NO. RS 61/280 OF 1885 (filed by Mahant Raghur Das against Secretary of State for India in Council) <ul style="list-style-type: none"> <li>• Permission to construct temple over Chabutra (17'x21')</li> <li>• Report for site plan showed existence of Babri Masjid and chabutra.</li> <li>• Suit dismissed and Appeal from Suit also dismissed.</li> </ul> </li> </ul> <p><b>IV. COMMUNAL RIOTS (1934)</b></p> <ul style="list-style-type: none"> <li>• Domes which were destructed were renovated at the cost of British Government.</li> <li>• Mohammedans permitted to start work of cleaning Mosque.</li> </ul> <p><b>V. COMPENSATION BY BAIRAGIS (1934)</b></p> <ul style="list-style-type: none"> <li>• Application to seek damages for destruction of Mosque was allowed against Bairagis.</li> <li>• Notice published to that effect by District Magistrate.</li> </ul> <p><b>VI. CONTINUOUS POSSESSION &amp; MANAGEMENT OF BABRI MOSQUE BY MUSLIMS:- 1934- 1949</b></p> <ul style="list-style-type: none"> <li>• Agreement executed by Mutawalli of Babri Masjid in favour of Pesh Imam regarding payment of his outstanding salary till 1935 to be paid in 2 years.</li> <li>• Application of Mutawalli filed before the Waqf Commissioner in the proceeding u/s 4 of the Waqf Act 1936</li> <li>• Application of Pesh Imam, Babri Masjid to Waqf Commissioner, praying for direction to Mutawalli Babri Masjid for payment out of arrears of salary due upto 31st July, 1938.</li> <li>• Reply of Sayed Kalbe Hussain S/o Syed Mohd. Razi (brother of Syed Mohd. Zaki – former Mutawalli) against the Notice of Sunni Waqf Board stating about the arrangement of Namaaz etc. and payment of salaries to Pesh Imam and Moazzin .</li> <li>• The District Waqf Commissioner, Faizabad held that the object for the grant was maintenance of and appoint a committee of management to supervise the maintenance and repairs of mosque and discharge duties as Mutawalli,( Sep 1938)</li> </ul> <p><b>VII. REGULAR SUIT NO 95/1941 filed by Mahant Ram Charan Das against Raghunath Dass and ors.</b></p> <ul style="list-style-type: none"> <li>• Notice from Shia Waqf Board to Sunni Waqf Board for instituting a suit u/s 5 (2) of the U.P. Muslim Waqf Act, 1936 against the Notification dated 26-2-1944 declaring it a Sunni Waqf.</li> </ul>	<ul style="list-style-type: none"> <li>• SUIT NO.29 OF 1945- Shia Waqf Board vs Sunni Waqf Board.</li> <li>• Report of District Waqf Commissioner 9-10 Dec 1949</li> </ul> <p><b>VIII. SURREPTIOUS PLACING OF IDOLS (22/23.12.1949)</b></p> <ul style="list-style-type: none"> <li>• Placing of idols.</li> <li>• FIR lodged.</li> <li>• Report of Waqf Commissioner dated 23.12.1949</li> <li>• Property attached 29.12.1949</li> </ul> <p><b>V. OOS No. 1 of 1989 filed. (16.1.1950)- only for right to worship</b></p> <ul style="list-style-type: none"> <li>• The United Province, Uttar Pradesh State Defendant No.6 filed its Written Statement admitting that on the night of December 22, 1949, the idols of Lord Ram were surreptitiously and wrongly put inside the Babri Masjid.</li> </ul> <p><b>VI. OOS No. 3 of 1989 filed. (17.12.1959)- seeking management &amp; charge of an alleged temple.</b></p> <p><b>VII. OOS No. 4 of 1989 filed. (18.12.1961)- for declaration of the disputed structure as a mosque, surrounding areas as graveyards and for recovery of possession of the same.</b></p> <p><b>VIII. Ram Janma Bhumi Nyas was formed [18.12.1985]</b></p> <ul style="list-style-type: none"> <li>• This Nyas was intrinsically connected with Vishva Hindu Parishad which admittedly enticed the crowd to demolish the Babri Masjid.</li> <li>• VHP was entitled to nominate 14 members in the Ram Janam Bhumi Nyas.</li> <li>• VHP has exercised this power to appoint Shri Deoki Nandan Agarwal ( Next friend) as the trustee of Nyas.</li> <li>• Composition of Nyas in 1985 &amp; later in 1993 shows deep political and Hindu fundamentalist involvement.</li> </ul> <p><b>IX. OOS No. 5 of 1989 filed. (1.07.1989)- By next friend on behalf of the idol and Ram janambhoomi (i.e. land) seeking declaration the suit land belongs to the plaintiff deities.</b></p> <p><b>X. Babri Mosque was demolished (6.12.1992) in violation of the undertaking given to this Hon'ble Court.</b></p>
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**XI. ILLEGALITIES INCLUDING DEMOLITION**

- The Hindus have based their rights on only illegal acts:-
  1. Preventing, and indeed flaunting that they prevented/harassed the Muslims when they went to offer Namaz in the Babri Mosque.
  2. Destroyed part of the Babri Mosque in 1934, for the repairs of which fine was imposed on Hindus.
  3. Criminal trespass in the Mosque.
  4. Desecration of the mosque on December 22/23,1949.
  5. Complete defacement of the entire mosque by putting of vermillion on all pillars.
  6. Photos were hung inside the mosque (Cf. Photos of 1950 & 1990) – even though mosque was in the charge of the receiver.
  7. Using the mosque for sleeping.
  8. Tampering of evidence relating to inscriptions
  9. Demolition of the mosque on December 6,1992 in utter violation of the status quo orders of this Hon'ble Court and the ensuing violence

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