

SKJ-5  
27/8/19

ISSUE OF POSSESSION & CONCLUSION OF HIGH COURT OF "JOINT POSSESSION"

68. The Case of the Plaintiff - Nirmohi Akhara is that there is a "Temple of Janma Bhumi" marked by the letters E.F.G.K.P.N.M.L.E. within which there was a Main temple (or the "Inner Courtyard") denoted by the letters E.F.G.H.I.J.K.L.E. which has always been in possession of the Nirmohi Akhara of which the plaintiff claims to be the Shebait or Sabrahkar and none other than the Hindus have ever been allowed to enter or worship therein. It has also been pleaded that no Mohammedan could or ever did enter the temple building at least since 1934.

69. The said pleading has the following parts:-

- (i) That there is a "temple of Janma Bhumi" (i.e. the inner and outer courtyard") of which the Main temple is the "Innter Courtyard". Thus the building was a temple and always used as a temple. It was never a mosque and no muslims were allowed to offer 'namaz' as alleged by the Muslims.
- (ii) That the "temple of Janma Bhumi" is in possession of the Nirmohi Akhara.
- (iii) That no muslim has been allowed or has ever entered the temple building at least some 1934.

70. The Muslim Parties have on the contrary alleged that the Disputed Building was a "Mosque" constructed by or under the Order of Shehanshah Babar in the year 1528AD. They have also claimed to be in exclusive continuous possession from the time the said "mosque" was built to the date when according to them the mosque was desecrated by placing of the idols on 22nd - 23rd December, 1949. They claim possession of the Inner as well as the Outer Courtyard.

71. "ACTUAL EXCLUSIVE USER" of the Building by the Hindus

- (i) Evidence of Prior Hindu Religious structure - (Page 2507 Para 4055-4056) That prior to the construction of a disputed structure, there was a non-islamic religious building in which the materials like the stone, pillars, bricks etc. of the earlier structure was used. The court finds the same to be a Hindu temple based on the intrinsic evidence of the ASI Report as well as the Travellers Gazetteers Accounts.
- (ii) Continued user by Hindus despite construction of a Mosque - (Page 2508 Para 4058) That the defacto position is that after demolition of a Hindu temple, a building was constructed in the shape of a "Mosque". However despite the construction of the building in the shape of a Mosque the defacto position was also that it was used and continued to be used and visited by Hindus for offering worship, puja and Darshan as per their beliefs.

(iii) **Nature of the property - (Para 4060-4063 Page 2508 Vol II and Para 4066-67 Page 2520) -** it is undisputed and has been found by all the three judges that the property in question (inner courtyard) was land locked while deciding issue No. 19(b) in OOS No. 4 of 1989.

(iv) The building though described as a "mosque" housed Hindu deities and hence was a "TEMPLE" for all practical purposes and was unnecessarily demolished on a misconception of being a "Masjid" in 1992. The position of the user and possession during the various periods can be analysed as under:-

#### PRE - 1855 AD

(a) It has been admitted and accepted by the Muslim parties that there is no evidence of the building being used for offering Namaz for any time prior to 1855 (See Para 2314 Page 1361 - Vol. II of the Judgment), wherein it is noticed:-

*"2314 Be that as it may, even if for the purpose of the issues in question we assume that the building in question was so constructed in 1528AD, there is no evidence whatsoever that after its construction, it was ever used as a mosque by muslims till at least 1856-57. Sri Jilani fairly admitted during the course of arguments that historical or other evidence is not available to show the position of possession or offering of namaz in the disputed building at least till 1855. He has also disputed seriously the alleged riots of 1855. For the time being we do not intend to concentrate on this aspect whether this denial of Sri Jilani and Siddiqui and other Muslim Counsels about 1855 riot is correct or not and proceed to consider further material and other aspects."*

(b) The gazetteers accounts especially (i) *Historique Et Géographique De L Inde* by Father Joseph Tieffentheller (published in the year 1770 AD), *East India Gazeteer of Hindustan* by Walter Hamilton (published in 1828 AD) as well as the *Gazetteer of the Territories under the Government of East India Company*, by Edward Thornton (published in 1858 AD) notice that the building, though recognised as a Mosque was being used as pilgrimage by the Hindus. While Tieffentheller describes the practice as *"... Nevertheless, they still pay a superstitious reverence to both these places, namely to that on which the natal dwelling of Ram stood by going three times round it prostrate on the earth..."*, Walter Hamilton recognises it by observing *"...The religious mendicants, who perform the pilgrimage to Oude are chiefly of the Ramata sect..."* and Edward Thornton notices that the place was *"... abundantly honoured by the pilgrimages and devotions of the Hindoos..."*. Thus while there is no evidence from the Muslim parties of "USER" of the place for offering Namaz or being used as a Mosque, there is ample intrinsic evidence of the place being a place of pilgrimage and reverence by the Hindus.