

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

S.L.P. (CIVIL) No. CC36A of 2010

CA 4739/11

30/8/19
Vanindik Shama

Akhil Bharat Hindu Mahasabha

...Petitioner

versus

Bhagwan Shri Ram Lala Virajman & Ors.

...Respondents

Arising out of:	Final Judgment and Order dated 30.09.2010 (IMPUGNED)
Passed by:	Allahbad High Court, Lucknow (Full Bench)
Passed in:	OOS No. 5 of 1989 OOS No. 1 of 1989 OOS No. 2 of 1989 OOS No. 4 of 1989
Decreeing:	1/3 rd of the suit land in favor of "Muslims" (Making a division of the Deity's property of Asthan- Shri Ram Janma Bhoomi)
PRAYER IN SUPREME COURT (MAIN)	Grant SLP against 30.09.2010 Impugned Judgment passed by Allahabad High Court, Lucknow
Prayer (INTERIM)	<ul style="list-style-type: none"> Ex-parte Stay operation of the Final Judgment and order dated 30.09.2010 Stay the final preparation of decree (in pursuant to Judgment 30.09.2010)

HISTORY

8,00,000 BC	Birth of Lord Ram (Treta Age) Lord of Universe, i.e. Lord Vishnu took incarnation in the shape of Lord Rama in Ayodhya
1000s of years Ago	Practice of worship of Asthan Shri Ram Janma Bhoomi, which became integral part of Hindu Religion. <u>Hindu Law</u> : Property vesting in the deity cannot be taken even by the king.
1114-1154	Shri Vishnu Hari temple (Rama Temple) was constructed by King Vikramaditya and reconstructed/renovated lastly by King of Gaharwal Dynasty.
1510	Guru Nanak Ji visited visited Ayodhya and took darshan of temple Ram Janma Bhoomi.

1528	Babur's army demolished temple, being worshiped by Hindus from thousands of years. Purpose of demolition: to tease Hindu community and make them aware that they have come under the "Islamic Rule"
1580-190	Abbul Fazal Almi, a minister of Emperor Akbar's Council compiled a gazetteer and administrative manual, which was published under the title "Ain-e-Akbari" translated by Colonel H S Jarrett:- <ul style="list-style-type: none"> • Birth of Lord Ram in Ayodhya City • NOT mentioned: Any existing mosques at the place in question
1608-1611	A traveler William Finch in his book "Early Travvls in India" wrote Rama castle was in ruins and Hindus were worshipping at the birth place of Lord Ram.
1765	A traveler, Triphentheller visited ayodhya mentioned Hindus were worshipping at that place. Similarly there is no mentioning of any mosque existing within the site.
1807-1814	East India Company deputed one Francis Hamilton Buchanan to have survey of entire area of Oude who submitted his report <u>Report:</u> He found inscription inscribed on the walls of disputed structure mentioning instance of Fakir Musa Ashiqan- Babur got demolished the existing Rama temple and a mosque was constructed. (Genuineness not been challenged by Muslims)
1828	1 st Gazetteer was published under East India Company mentioning the land as a mass of rubbish and jungle, amongst which are reputed sites of temples dedicated to Rama, his wife and brothers.
1855	Riot took place between Hindus and Muslim, after which Hindus continued to be in possession over the structure.
1856	Mirza Jaan published a book "Hahiq-i-Shahda" mentioning Hindu Temples situated at Birth Place of Lord Krishna and Ram were demolished by Muslim rulers.
1862-1865	4 Reports by ASI: Discussion about Ayodhya that Ram Temple was at the place I question and the Asthn of Janmabhoomi was being worshiped by Hindus.
1870	Report by P. Carnegi (Officiating Commissioner & Settlement Officer, Faizabad) mentioning 3 Hindu Shrines were demolished and mosque was constructed.
1885	THE FIRST SUIT

	<p>Suit was filed against the State by Mahant Raghubar Das (individual capacity) for raising construction of small temple at Chabutra in outer courtyard of disputed structure.</p> <p>Suit was dismissed by Civil Judge, First and Second appeals were filed, the same were dismissed.</p> <p>District Judge Held: Mosque was constructed by babur after demolishing the temple.</p> <p>Muslims did not prefer any appeal against the said finding.</p>
1891	<p>Report titled as "Monumental Antiquities and Inscriptions" prepared by A. Fuhrer (ASI) mentioning that the mosque was constructed by Babur upon the birth place of Ram, after destroying the temple.</p>
1938	<p>Montgomery Martin wrote on Page 335 of Book titled as "History, Antiquities, Topography and statics of Eastern India" that the begot by whom the temples were destroyed, is said to have erected mosque</p>
1950-1964	<p>Several Suits were filed by several parties seeking declaration of the disputed structure.</p>
06.01.1964	<p>All the pending suits were clubbed and Muslim Suit was made the leading suit.</p>
01.07.1989	<p>Shri Ram Lala Virajaman and Asthan Shri Ram Janmabhoomi (through next friend) filed suit No. 23 of 1989.</p> <p>Prayer:</p> <p>To declare the disputed land in favor of the Plaintiffs.</p>
10.07.1989	<p>High Court directed to transfer all suits from Civil Court to 3-judge bench of High Court.</p>
1991	<p>UP Govt. acquired 2.77 Acres land (excluding the disputed land) nearby for the purpose of development for pilgrimage, which was challenged by Muslims.</p>
1993	<ul style="list-style-type: none"> When the matter flared up, Muslims at national level agreed that if it is proved that the structure was raised after demolition of Hindu temple, they would have no claim over the property. Central Govt. enacted Acquisition of Certain Area at Ayodhya Act, 1993 (Act 33 of 1993), which was challenged in Supreme Court.
1994	<p>Apex Court decided the validity of the act in case of <i>Ismail Farooqui v. UOI</i>, (1994) 6 SCC 360,</p> <ol style="list-style-type: none"> striking down Sec 4(3) of the Act, reviving the suit, directing for disposal of suit,

	<p>d. decide the title of the parties over the structure</p> <p>High Court was require to:</p> <p>i. decide the question of title</p> <p>ii. record a finding determining the title/ownership</p>
01.08.2002/ 05.03.2003	<p>High Court directed ASI to prepare a survey and file a report based on such survey.</p> <p>Required from ASI to resolve the paramount issue as to whether the structure has been constructed after demolishing a Hindu Temple.</p>
22.08.2003	<p>ASI submitted report: floor of the disputed building was just over the floor of the earlier building.</p>
30.09.2010 IMPUGNED JUDGMENT	<p>High Court Held:</p> <ul style="list-style-type: none"> • Structure has been constructed after demolishing a Hindu Temple. • There was no proof that any Waqf was created in respect of the property, and the same cannot file suit as the disputed property has not been notified by the waqf board. <p>INSTEAD THE HIGH COURT HAS GRANTED 1/3RD OF Deity's LAND IN FAVOR OF MUSLIMS(MOSQUE).</p>
22.12.2010	<p>The PRESENT S.L.P. has been filed.</p>

QUESTIONS OF LAW

1. Court can pass order without jurisdiction?
2. Trial Court was not supposed to give its finding on each subject and arguments?
3. Any law affecting the right to religion (Art 25) to Hindus can remain in operation after 26.01.1950 even after Art 13(1) filter?
4. Muslims can claim any right/title/interest over deity's property (over which the building was constructed by a Muslim ruler)?
5. Conflict between native law and foreign law, native law will prevail?

Question 3, 4, & 5 remain untouched by the High Court

6. Deity's Property can be partitioned? Muslim can be allowed to use the same?
7. In absence of finding (creation of Waqf), the Court can decree 1/3rd of land in favor of Muslims?
8. Building is being termed as mosque for 90 years by Muslims (without establishing the creation of Waqf and their exclusive possession), any right can be created in favor of Muslims?
9. After dismissing the Muslim suit filed in representative capacity, no relief can be granted to them?

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10. Waqf board has no right to file a suit in the absence of mutawalli before the Court; the HC is justified in decreeing 1/3rd property in favor of Muslims?
 11. Presence of Muslims in a temple and offering namaz, that can confer any right / title/ claim or possession over property?
 12. Civil Court can pass a DECREE FOR PARTITION in a suit filed for declaration, possession and injunction?
 13. Muslim can construct any building over Deity's Property?
 14. After recording the finding (Muslims were not in possession over disputed property up to 1860), any right can be accrued to Muslims? Court can grant any decree in their favor?
 15. Dismissal of Muslim suits bars their claim over the property?
 16. Muslims' right over the property stand extinguished since 1861? (Property vested in Govt.)
 17. Civil Court can pass decree in suit (though not claimed by any litigating parties to the suit OR can mould the relief alien to the pleadings of the parties)?
 18. Absence of creation of any Waqf and signs of Hindu god and goddess in a building, can it be termed as "Mosque"?
 19. Civil Court has to apply the provisions of Constitution of India?
 20. Change of sovereignty w.e.f. 26.01.1950 restrict any Indian court to take into account any pre-existing law offering any provisions (Part III) and against the same theme of Constitution?
 21. Birth place of Lord Ram is religious and cultural heritage of India? And the Court cannot pass any decree detrimental to the same?
 22. Any law/rule/regulation passed by the Muslim or British ruler (which was barbarous, tyrannous and teases the Hindu sentiments) can be allowed to continue by the Court?
 23. International treaties and Conventions (India is a signatories) can be applied if municipal law is not occupying the said field?

GROUNDS

- a) Because the court can pass decree of 1/3rd as it was never prayed for.
- b) Because no finding has been given to the arguments of the petitioner on Article 31 of the Constitution of India.
- c) In view of *Ismail Farooqui v UOI*, the High Court was required to decide the ownership title and had no jurisdiction to pass a partition decree.
- d) Because the finding of court that owner of property was the deity and hence the grant of 1/3rd of land to Muslims was not open to High Court.
- e) Because of the overwhelming history and religious sanctity of the Ram Janam Bhoomi, the High Court should not have given 1/3rd of land to Muslims was not open to High Court.
- f) Because once it is proved land belonged to Ram Janam Bhoomi, the Muslims do not have a right on the land.

- g) Because once it is proved that the land was taken over by invaders, the actions of the invaders cannot give Muslims right over the land.
- h) Because the mosque was built by demolishing a Hindu temple, hence cannot give Muslims right over the land.
- i) Because Muslims have conceded that their possession of land started in 1855 and hence cannot claim title over the land.
- j) Because no Waqf was created in respect of the land in questions and since it was a simple building and not a mosque, Muslims cannot claim right over the property.
- k) Because the property vested in Nazul Sarkar and after such Muslims lost claim over the land.
- l) Because there is no evidence of creating of Waqf by Babur or any other ruler or any inscriptions, hence property cannot be claimed by the Muslims.
- m) Because the report of ASI, which acts scientific evidence, shows the disputed structure was built over a demolished land.
- n) Because under Islamic Law, Property belonged to the Waqf of the Waqf and Babur did not have one.
- o) Because sovereignty obtained by invasion cannot confer rights over property.
- p) Because Muslims have claimed land through adverse possession and hence are not true owner of the land.
- q) Because the deity never loses right over property because of change in king and Hindu law which is native prevails over Islam.
- r) Because the purpose of Babur and other Muslim rulers was to shame Indians show might by standing over the Ram Janambhoomi.
- s) Because the Muslims must prove the existence of the Waqf commissioned by Babur over the disputed property.
- t) Because of the consensus among Muslim Historians that disputed structure was built over temple till 1965.
- u) Because of one civil suit and one Sunni Waqf board judgment which stated that the Mosque was built over temple.
- v) Because of an inscription published in an journal which confirms that Babur ordered the demolition of the Temple
- w) Because of Hamilton Francis report which confirms that Babur ordered the demolition of Hindu Temple.
- x) Because of another report by ASI in 195 which relied in Muslims establishing the Mosque was built over the temple.
- y) Because after recording that finding that Muslims entered only after 1855 and not Waqf was created, High Court was wrong to give 1/3 of the land.
- z) Because title of deity has been proved by the Hindus.
- aa) Because the basis of the High Court being that Muslims were using the property as mosque is false as it was unused for 100 years.

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- bb) Because the basis of the High Court being that Muslims were using the property as mosque and hence entitled for one third of property.
 - cc) Because the High Court was wrong as the Muslims have used it for 300 years in British rule and therefore cannot claim one third of the property.
 - dd) Because of travelers account prove that Hindus were in exclusive physical possession of land.
 - ee) Because of multiple reports from 1800-1960, prove that Hindus Temple existed before construction of disputed structure
 - ff) Because High Court was wrong in giving one third property as they had appreciated the historical and archaeological report supporting that property originally belonged to deity.
 - gg) Because Waqf board make no attempt to add the disputed property as a waqf property in notification of 1944.
 - hh) Because no Muttawalli came forward to claim the disputed property in absence of Waqf Board
 - ii) Because the disputed area has always been deity's property where Ram Lalla is a resident and is a sacred area for Hindus
 - jj) Because for worshippers the entire palace of Dashrath has been scared and worshipped.
 - kk) Because High Court has held Ram Lalla and JanamBhoomi were worshipped time immemorial and it was wrong to decree 1/3rd property to Muslims
 - ll) Because it is not a question where lord Ram was born as the entire Palace of Dashrath is considered pious.
 - mm) Because there was no Muslim presence before 1528 and the entire place was belonging to Hindus
 - nn) Because the High Court had ordered the ASI for excavation of site to confirm whether Hindu Temple existed or not and such question must be answered.
 - oo) Because if a finding is recorded that structure was built after demolition, title and ownership must be decided in favour of temple.
 - pp) Because the three judges have rejected the objection of Muslims over ASI's report and must act as evidence
 - qq) Because the Muslim suit was declared a representative suit as was applicable on both Hindus and Muslims and was dismissed by High Court and hence the same court should not have given 1/3rd of the land.
 - rr) Because the High Court by majority opinion has held Hindus were in exclusive possession over outer courtyard even though they were in joint possession over the inner courtyard and Muslims cannot offer prayers in temple or deity's property.
 - ss) Because the Muslims built structure using force of arms and hence cannot be conferred title.
 - tt) Because the decree of High Court giving 1/3rd of land is against facts and laws applicable.

Varinder Ks. Sharma