

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

RESPONSE TO SUBMISSIONS MADE BY NIRMOHI AKARAH

ON 27.08.2010

BY DR. RAJEEV DHAVAN, SENIOR ADVOCATE

COMPILED BY:-

EJAZ MAQBOOL, ADVOCATE FOR THE APPELLANT

II. PRE-1855 AD

5. To aver that there was no namaz, they have made the following arguments:-

(i) Statement of Mr. Jilani that there was no evidence to show offering of namaz in the disputed building atleast till 1855. [Para 2314 @ pg. 1361/Vol. II]

(ii) The following gazetteers have though recognized the disputed structure as a mosque but have recognized that the same was being used as a pilgrimage by Hindus:-

a) Historique Et Geographique De I Inde by Father Joseph Tieffenthaler (1770 AD)

b) East India Gazetteer of Hindustan by Walter Hamilton (1828 AD)

c) Gazetteer of the Territories under the Government of East India Company by Edward Thornton (1858 AD)

6. **Historique Et Geographique De I Inde by Father Joseph Tieffenthaler (1770 AD):-** It is relevant to note that Tieffenthaler also records the following points:-

(i) Aurangzebe demolished the fortress called Ramcoté and erected on the site, a Mohammedan temple with a triple dome. According to others it was erected by Babur. [Pg. 3089 of Vol. III of Impugned Judgment]

(ii) It is relevant to note that Tieffenthaler also mentions a bedi (cradle) and states that it was on this where Beshan (Vishnoo) was born in the form of Ram. [Pg. 3089-3090 @ pg. 3090 of Vol. III of Impugned Judgment]

(iii) This has to be read with statement of DW 3/18 who states that Ram Chabutara was also called Bedi. This shows that the Hindu belief was that Lord Ram was born on Chabutara. [Pg. 10663/Vol. 58]

7. **East India Gazetteer of Hindustan by Walter Hamilton (1828 AD):-** He did not record that he saw a mosque in his gazetteer but mere non recording of this fact by Walter Hamilton, does not lead to the conclusion that the mosque never existed. Further, Walter Hamilton also records that whatever may have.

- a) The Gazetteer mentions at **pg. 33(Running Volume 73)** that: - *"The desire expressed in the General Courts of the East-India Company that an authentic Gazetteer of India should be offered to the British public in a cheap and convenient form, has led to the publication of this present edition."*
- b) This Gazetteer makes it clear that the mosque existed and the inscription thereupon clearly stated that the same was built by Babur. Needless to say, that at that stage there could be no question of any tampering with the inscriptions as has been suggested by some parties.
- c) Further, it has categorically been mentioned that Hindus regarded a cradle (bedi) as the birthplace of Lord Ram. It is submitted that this cradle was in the outer courtyard at the Ram Chabutara. This is evident from:-
 - i. Statement of DW 3/18 (witness on behalf of Nirmohi Akhara) who states that Ram Chabutara was also called Bedi. This shows that the Hindu belief was that Lord Ram was born on Chabutara. **[Pg. 10663/Vol. 58]**
 - ii. Further the statement of OPW 9, Dr. T.P. Verma (who is an Expert Witness- Epigraphist and Historian) is also relevant in this regard. He is a witness who has deposed on behalf of the Plaintiffs of Suit 5. This witness states that the belief of the Hindus was that Lord Ram was born under the central dome and that Hindus by agreement had started offering their prayers outside, taking Ram Chabutara to be the birthplace. He further stated that there is no mention of Chabutara in any gazetteers rather there is mention of cradle. He then clarifies that this cradle must have been kept above this chabutara. **[Pgs. 2822-2824/Vol. 3 at pgs. 2823-2824]**

III. 1855-1885

- 9. Reliance has been placed on the following to show that the Hindus re-captured the alleged Janamsthan from the Muslims during the

riots of 1855, and it has been submitted that thereafter they never gave up the possession thereof: -

- i. Historical Sketch of Faizabad by P Carnegi [1862-65]
- ii. Report of settlement of Land Revenue of Faizabad district by A F. Millet [1880]
- iii. Fyzabad Gazetteer, Volume XLIII of the District Gazetteers of the United Provinces of Agra and Oudh by H R Nevill [1928]

10. **Historical Sketch of Faizabad by P Carnegi [1862-65]- Pgs. 4054-4062/Vol. III of the Impugned Judgment**

- i. Reliance has been placed on the portion at **pg. 4062**, wherein it has been mentioned that a rupture took place between the Hindus and Muslims in 1855 and at that time, the Hindus, in their third attempt took the Janamshtan at the gate of which 75 Mohemmadans were buried in the Martyrs Grave (Ganj Shahid)
- ii. At the outset it is relevant to note that: -
 - a) Carnegi records that Babur built a mosque at the Janamsthan (Pg. 4061/Vol III of the Impugned Judgment)
 - b) He further records that the mosque bears the name of Babur & also notices the two inscriptions. (**Pg. 4061/Vol III of the Impugned Judgment**)
 - c) The Kasuati pillars, which may have been a part of a previous temple, have been used in the construction of Babari Mosque strongly resemble Buddhist pillars. (**Pg. 4062/Vol III of the Impugned Judgment**)
 - d) Till 1855, Hindus and Mohemmeddians alike used to worship in the Mosque- Temple. (**Pg. 4062/Vol III of the Impugned Judgment**)
 - e) Since British rule a railing has been put up to prevent disputes. It is within this railing that the mosque exists and that is where the Muslims pray. Whereas the Hindus pray outside the fence where they have raised a platform. (**Pg. 4062/ Vol. III of the Impugned Judgment**)

11. In view of the foregoing, it is apparent that the reliance on Carnegie to state that Muslims had lost possession, is misplaced as the author himself highlights the possession of the Muslims, both pre and post 1855.

12. **Report of settlement of Land Revenue of Faizabad district by A F . Millet [1880] [Pgs. 4065-4068 of Vol. III of the Impugned Judgment]:-**

i. Reliance has been placed on the portion at **pg. 4067**, wherein it has been mentioned that a rupture took place between the Hindus and Muslims in 1855 and at that time, the Hindus, in their third attempt took the Janamshtan at the gate of which 75 Mohemmadans were buried in the Martyrs Grave (Ganj Shahid)

ii. At the outset it is relevant to note that:-

a) Millet records that Babur built a mosque at the Janamsthan (**Pg. 4067/Vol III of the Impugned Judgment**)

b) He further records that the mosque bears the name of Babur & also notices the two inscriptions. (**Pg. 4067/Vol III of the Impugned Judgment**)

c) The Kasuati pillars, which may have been a part of a previous temple, have been used in the construction of Babari Mosque strongly resemble Buddhist pillars. (**Pg. 4067/Vol III of the Impugned Judgment**)

d) Till 1855, Hindus and Mohemmeddians alike used to worship in the Mosque- Temple. (**Pg. 4067/Vol III of the Impugned Judgment**)

e) Since British rule a railing has been put up to prevent disputes. It is within this railing that the mosque exists and that is where the Muslims pray. Whereas the Hindus pray outside the fence where they have raised a platform. (**Pg. 4067/ Vol. III of the Impugned Judgment**)

iii. Here again, author himself highlights the possession of the Muslims, both pre and post 1855.

13. **Fyzabad Gazetteer, Volume XLIII of the District Gazetteers of the United Provinces of Agra and Oudh by H. R. Nevill [1905 Edition at pgs. 4070-4074 and 1928 Edition at Pgs. 4074-4078/Vol. 3]**

- i. Reliance has been placed on the portion [pgs. **4072 (1905 edition) & 4076 (1928 edition)**], wherein it has been mentioned that a rupture took place between the Hindus and Muslims in 1855 and at that time, the Hindus, in their third attempt took the Janamshtan at the gate of which 75 Mohemmadans were buried in the Martyrs Grave (Ganj Shahid)
- ii. At the outset it is relevant to note that Nevill also records the following:-
 - a) In the preface of his gazetteer, Nevill states that much of what was contained in Carnegy and Millet was of "purely traditional & speculative character" (**Pgs. 4070 & 4074/Vol III of the Impugned Judgment**)
 - b) In 1528 A.D. Babur came to Ajodhya and halted there for a week. He distorted an ancient temple and, on the site, built a mosque known as Babar's Mosque (**Pgs. 4071 & 4076/Vol III of the Impugned Judgment**)
 - c) The Mosque has two inscriptions, one on the outside and other on the pulpit, both are in Persian and bear the date 935 Hijri. Of the authenticity of the inscription there can be no doubt. (**Pg. 4071 & 4076/Vol III of the Impugned Judgment**)
 - d) Till 1855, Hindus and Mohemmeddians alike used to worship in the Mosque- Temple. (**Pgs. 4072 & 4076/Vol III of the Impugned Judgment**)
 - e) Since British rule a railing has been put up to prevent disputes. It is within this railing that the mosque exists and that is where the Muslims pray. Whereas the Hindus pray outside the fence where they have raised a platform. (**Pgs. 4072 & 4076/ Vol. III of the Impugned Judgment**)

14. Once again, author himself highlights the possession of the Muslims, both pre and post 1855.

15. In addition to the above, reliance has been placed on the following to show the presence and continuous user of the Ram Janma Bhumi temple by Nirmohi Akhara after 1855:-

a) **Ex. A13, Suit No. 1 [Volume 3 @ pg. 36]:** Copy of application dated 25.9.1866 by Mohd. Afzal, Mutwalli, Masjid Babri, Oudh: This is an application by Mohd. Afzal (Mutwalli Masjid Babri) complaining about the construction of a Kothari near the Chabutra by the Bairagis. A perusal of this application shows *inter alia* the following points:-

a. Babri Masjid situated near Janamsthan at Avadh was built by King Babur. **[Volume 3 @ pg. 36 & Pg. 1397/Vol. 2 of the Impugned Judgment]**

b. Chabutara, Kothari were unlawfully built and that Bairagis had also attempted to place an idol inside the disputed premises for about 3 hours. **[Volume 3 @ pg. 37 & Pg. 1397/Vol. 2 of the Impugned Judgment]**

c. It is relevant to note that the suit of Nirmohi Akhara is confined to the disputed structure & the inner outer courtyard, while this document relates to the outer courtyard. Further, this document records the existence of Babri Masjid near Janamshtan, which falsifies the claim of Nirmohi that there was always a temple at the disputed site. **[Volume 3 @ pgs. 36-37 & Pg. 1397/Vol. 2 of the Impugned Judgment]**

b) **Ex. 29, Suit No. 1 [Vol. 87 @ pg. 135]:** Copy of the order dated 12.10.1866 of Deputy Commissioner, Faizabad in Case No. 223: This order only mentions that the abovementioned complaint was consigned to record.

c) **Ex. 30 Suit no. 1 [Vol. 87 @ pg. 136-144] :** Copy of memo of appeal dated 13.12.1870 before Commissioner against order dated 03.04.1877 passed by Dy. Commissioner along with **Ex. 16, Suit No. 1 [Vol. 87 @ pg. 66-68]** Copy of the order of the Commissioner Faizabad dated 13.12.1877 in Mohd. Asgar Vs. Khem Das, Misc. Appeal No. 56.

- a. On 13.4.1877, permission granted for construction of a gate on the Northern Side, i.e. the Singh Dwar. This permission was challenged by Mohd. Asghar. Subsequently, a report was called for by the Deputy Commissioner who took the view that the permission should not be cancelled. Ultimately, the appeal was rejected. Nirmohi Akhara is relying on the said document to show that they were in possession and that Muslims were denied relief, showing that they were not in possession.
- b. It is relevant to note that the permission was not cancelled on the grounds of 'public safety'. This is evident from the following facts:
- ❖ The Report of the Commissioner mentions that if the other door is not opened then human life would be endangered as there was great rush. [See pg. 65 of Vol. 87]
 - ❖ The Report of the Commissioner states that the other door was required in the interest of Public Safety. [See pg. 68 of Vol. 87]
- c. In any event, all this document pertains to outer courtyard which is beyond the scope of the suit filed by Nirmohi.
- d) **EX. 24, Suit no. 1 [Vol. 87 @ pg. 110]** Copy of memo of appeal dated 13.12.1870 before Commissioner against order dated 03.04.1877 passed by Dy. Commissioner along with Ex. 17, Suit No. 1 [Vol. 87 @ pgs. 69-79] Copy of judgment dated 18.6.1883 passed by Sub Judge, Faizabad in case no. 1374/943, *Syed Mohd. Asghar Vs Raghubar Das*.
- a. This was suit filed against Raghubar Das for sharing of rent regarding user of Chabutara during the Kartik Mela. Subsequently on 18.6.1883, this suit was dismissed. Nirmohi has stated that since the suit was filed against Raghubar Das of Nirmohi, it is apparent that Nirmohi was in possession and that Nirmohi was the shebait.
- b. At this point it is relevant to note that:-

- ❖ Relevant to note that Nirmohi has distanced itself from Mahant Raghubar Das. [Para 17-19 of the Replication filed by Nirmohi Akhara at pgs. 69-70 of the Pleadings Volume-Running Volume 72 and the Written Statement of Nirmohi Akhara in Suit 4 at Para 6 at pg. 110 of the Pleadings Volume- Running Volume 72].
- ❖ However, subsequently, during the course of arguments Nirmohi Akhara accepted that Mahant Raghubar Das was a Mahant of the Nirmohi Akhara and this has been recorded in the impugned judgment at **Para 964/Pg. 797 of Vol. 1.**
- ❖ Further in this document itself the description of claim notes the existence of Babri Masjid, which completely demolishes the case of Nirmohi that there was no masjid and that the disputed site was always a mosque. [Pg. 110 of Vol 87]

e) **Ex. 18, Suit No. 1:-** Copy of the application of Mohd. Asghar dated 2.11.1883 in the Court of Assist. Commissioner Faizabad in *Mohd. Asgar v. Raghubar Das*.

a. This application was filed by Mohd. Asghar to seek permission for carrying out repair and whitewash of the Masjid. This application was subsequently rejected on 12.1. 1884. It has been relied upon by Nirmohi Akhara to show that in this plaint the possession of Nirmohi is admitted *qua* the Chabutra and the Sita Rasoi.

b. It is submitted that:-

- ❖ The application shows that Raghubar Das was Mahant of Chabutara Janamsthan which negates the case of Nirmohi that there was another temple in the inner part. This shows that even if Nirmohi has been acting as Shebait it was acting as a Shebait only with respect to the Ram Chabutara. [Pg. 83-85 of Vol. 87]

- ❖ Further, the order rejecting the application directs that the outer door shall be left open and also directs maintenance of status quo in order to maintain neutrality. [Pg. 164 of Vol 87]

16. Thereafter reference has been made to the following exhibits relied upon by the Muslim Parties: -

i. After referring to annexures A-10 and A-11 which show that a cash grant of Rs. 302-3-6 was sanctioned by the British Government, it was stated that the Hon'ble High Court found that this document did not prove that the building in dispute was being used by Muslims to offer Namaz to the extent of ouster of Hindu people or otherwise.

a) In respect of the foregoing it is relevant to note the details of the abovementioned annexures: -

❖ **Exhibit A-10 (Pgs. 30-33/Vol. 3):-** The Register of Inquiry records that Emperor Babar granted revenue grant of Rs. 302/3/6 to Mir Baqi for the purposes of construction and maintenance of Mosque namely Babri Mosque at village Shahnawa.

"Based on the testimonies, this land free grant was given as a Waqf at the time of preparation for construction of Babri Masjid situated at Ayodhya by kind Babar for meeting the expenses of the salary of Muezzin and Khatib. The year and date are not known. This land free grant was given to Saiyed Baqi for his lifetime and thereafter to his son (illegible) Ali for lifetime and thereafter to Saiyed Hussaini Ali. His son had the possession of lands for about 60 years. Now presently his son-in-law Siayed Rajjab Ali and Mohd. Asghar, Son-in-law, by having it. Till possession of 1263 F. era, was instituted by Akbar and began on 10th September 1555 (Harvest year) continued to receive /include in cash from village Shanawa, through receipt (illegible). Inquiry into the rent-free land just began in the year 1264 F (sic) when riots broke out...."

.... Decision of the Board in accordance with the order of the Government vide slip No. 2321 dated June 29, 1880. This grant will survive till the survival (continuation) of the proposal for which it was given exemption from land revenue."

❖ **Exhibit A3(Pgs. 11-12/Vol. 3):-** This is the Grant Certificate of Chief Commissioner in favour of Rajjab Ali and Mohd. Asghar.

- b) It is submitted that both these documents show that the Mosque was in existence and that valuable grant had been obtained from the Britishers in respect of the Mosque. It is relevant to note that though the Hon'ble Court at **para 2336 (Pg. 1380/Vol. 2 of Impugned Judgment)** holds that these documents by themselves do not show that Muslims were offering Namaz, the Hon'ble High Court agrees that a financial assistance was provided by the British Government for the purpose of the Mosque. Further the Hon'ble High Court at **para 2393 @ pg. 1451/Vol. 2** of the Impugned Judgment, observes as follows:-

The above documents show that in order to justify the amount received by Mir Rajjab Ali and Mohd. Afjal and their successors in the form of the grant, they made some expenses on the maintenance of disputed structure and that was shown in the records also, which was inspected and found correct by the Government officials namely Tehsildar etc. The interesting thing discern from all these documents is that none of them throws any light on the fact whether the Muslim public visited the disputed premises for offering namaz during all this period. From the stand taken by Mohd. Zaki before the Waqf Commissioner, it is evident that the grant of the two villages was treated as personal grant and in one or the other documents, besides the word 'Mutwalli'/'khatib', it also mentions "Zamindar" qua the two villages grant whereof was allowed. Moreover in respect to Hindu fairs at Ayodhya i.e. Ram Navmi fair, they shared

income of rental when some of the part of the land was allowed to be used by outsiders for keeping shops, with the Priest of Nirmohi Akhara, who were managing and possessing Ram Chabutara and other Hindu religious structures and places existing in the outer courtyard.

c) In view of the foregoing it is clear that:-

- ❖ The officials of the Government at that time inspected and found it correct that expenses were being incurred for the upkeep of the mosque. Certainly, the officials would not have approved of the same if the mosque wasn't being used for prayers.
- ❖ Secondly, Nirmohi Akhara was in the management and possession of only the Ram Chabutara and other Hindu religious structures and places existing in the outer courtyard.

d) Exhibit A-8 [Pgs. 1278-1296/Vol. 10] is a statement of Income & Expenditure of the mosque submitted by the earlier Mutalwallis in Suit No. 29 of 1945. These records show that expenses were being incurred *inter alia* for the following purposes: -

- ❖ Expenses of Eid-ul-Fitr & Eid-ul-Azha (@ pg. 1280, 1283)
- ❖ Iftari to those Fasting (@ pg. 1280, 1282)
- ❖ Completion of reading of Quran (@ pg. 1280)
- ❖ Salaray of Muezzin (@ pg. 1280, 1283)
- ❖ Juma Prayer -Rs. 44 (@ pg. 1280)
- ❖ Preparation of prayer rug (@ pgs. 1283)

e) The Hon'ble High Court disregarded the above document since no witness had appeared to prove the same [Para 2355-2358 @ pgs. 1411-1412/Vol. 2 of the Judgment]. However as mentioned above, at another place (para 2393 @ pg.

1451/Vol. 2) while giving a conclusion on the documents exhibited by the Muslim parties, the Hon'ble high Court has observed that the expenses incurred by Mohd. Asghar and Rajjab Ali were inspected and found to be correct by the British Officials, in such circumstances the said financial records ought not to be out rightly rejected. Further this has to be read with the report of the Wakfi Commissioner dated 10.12.1949 [**Pgs. 1738-1739 @ Vol. II of the Impugned Judgment**], wherein it has been recorded that Hindus were harassing the Muslims who were going to offer prayers in the Mosque and therefore a complaint be sent to the Deputy Commissioner so that nobody harasses the Muslims, going into the Masjid to offer Namaz. Further the Waqf Inspector also visited the Mosque on December 22, 1949 and on the basis of his visit, tendered a report dated December 23, 1949, wherein it has been mentioned that Friday Namaz was taking place regularly [**Pgs. 1742-1743 @ Vol. II of the Impugned Judgment**]. All these documents taken together show that prayers were being regularly held at the Babri Masjid, particularly the Friday prayers.

f) Additionally, it is reiterated that Carnegi & Millet, both of whom have been relied upon by the opposite parties have categorically stated that:-

- ❖ Till 1855, Hindus and Mohemmeddians alike used to worship in the Mosque- Temple.
- ❖ Since British rule a railing has been put up to prevent disputes. It is within this railing that the mosque exists and that is where the Muslims pray. Whereas the Hindus pray outside the fence where they have raised a platform.

g) Thus, the fact of continuous prayer being done by Muslims is, confirmed in view of the abovementioned documents.

17. Thereafter Nirmohi Akhara has stated that Nevill (1905 & 1928) has wrongly mentioned that-

- i. Till 1855, Hindus and Mohemmeddians alike used to worship in the Mosque- Temple
 - ii. Since British rule a railing has been put up to prevent disputes. It is within this railing that the mosque exists and that is where the Muslims pray. Whereas the Hindus pray outside the fence where they have raised a platform.
18. They have stated that since Nevill has prefixed these two observations by :- "*it is said that*" this statement is merely hearsay. However, it is to be noted that the Nevill even states the Babur destroyed an ancient temple and, on its site, built the Babari Mosque, needless to say that all such statements are also mere hearsay and by that logic all of these statements should be disregarded.
19. It is further relevant to note that Nirmohi Akhara wrongly mentions, that Carnegi & Millet do not record construction of any such grill wall by the British. It is submitted that both these writers categorically mention both the above statements, Carnegi at **Pg. 4062/Vol III of the Impugned Judgment** and Millet at **Pg. 4067/Vol III of the Impugned Judgment**.

IV. THE 1885 SUIT

20. On January 19, 1885, a plaint being Case No. 61/280 was filed by one Raghubar Das against Sec. of State (case no. 61/280(1885) wherein it was averred that the place of birth situated in Ayodhya is a holy place of worship for Hindus. It was further clarified that a small Chabutara 17X21ft,, wherein the Charan Paduka was affixed was being worshipped. It was therefore requested that a construction of temple maybe permitted on the said Chabutara. It was averred by Nirmohi that this suit was filed by Mahant Raghubar Das in individual capacity. [**Ex. A22, Suit No. 1 @ pgs. 51-54/Vol. 3**].
21. At the outset, a perusal of this plaint reveals the following:-
- i. The cause title of the suit states Mahant Raghubar Das, Mahant Janmsthan.
 - ii. Chabutara was being prayed as the place of birth.
 - iii. The map annexed to this suit shows the Masjid and states that only the outer courtyard is in the possession of Hindus

while the inner courtyard along with the masjid is in the possession of the Muslims.

22. On December 24, 1885, the Sub-Judge rejected the prayer of construction of temple at the Chabutara. [Ex. A26, Suit No. 1 @ pgs. 63-70/Vol. 3]

23. A perusal of this order reveals the following: -

i. It is relevant to note that this judgment held that the Muslims were praying inside in the Masjid and the Hindus were praying outside at the Chabutara. Between the Masjid and Chabootra is well built wall with railings.

ii. It was also recorded that before this a controversy had arisen both Hindus and Muslims were worshipping in the place and therefore in 1855, a wall in the form of railing was erected to avoid controversy, so that Muslims worship inside it and Hindus worship outside it.

iii. It was further erroneously recorded that Chabutara was in the possession of the Plaintiffs and belonged to Hindus. However, this finding was set aside in the appeal. [See pgs. 63-70 @ pg. 68-69/Vol. 3]

24. Subsequently, the appeal filed by Mahant Raghubar Das, was rejected on 18/26 March 1886. In this judgment, the Hon'ble District Judge made two important observations [Ex. A27, Suit No.1 @ pgs. 4200-4201/Vol. 3 of the Impugned Judgment]:-

i. The Chabutara is said to indicate the birth place of Ram Chandra

ii. The finding that Chabutara belonged to the Hindus was set aside.

[See pgs. 4200-4201/Vol. III at pg. 4201]

25. The submission of Nirmohi is as follows: -

i. The suit was filed in individual capacity by Mahant Raghubar Das, however it shows that Nirmohi was in possession and was continuing to worship the deities, through Raghubar Das.

- ii. The Building was being described as mosque but was only being used by Hindus to offer worship as noticed by Tieffenthaler.
- iii. Describing the Masjid in the Suit Map is only for the identification and location of the suit property.

26. In reply to above, it is submitted that: -

- i. Nirmohi cannot take contradictory stands in respect of Mahant Raghubar Das.

❖ It is relevant to note that even previously Nirmohi had distanced itself from Mahant Raghubar Das. **[Para 17-19 of the Replication filed by Nirmohi Akhara at pgs. 69-70 of the Pleadings Volume-Running Volume 72].**

❖ However, subsequently, during the course of arguments Nirmohi Akhara accepted that Mahant Raghubar Das was a Mahant of the Nirmohi Akhara and this has been recorded in the impugned judgment at **Para 964/Pg. 797 of Vol. 1.**

- ii. In respect of Tieffenthaler, as mentioned above, he observes that a bedi (cradle) was the place where Beshan (Vishnoo) was born in the form of Ram. **[Pg. 3089-3090 @ pg. 3090 of Vol. III of Impugned Judgment].** Again, witnesses of the opposite parties **[See DW 3/18 (Pg. 10663/Vol. 58) and OPW -9 (Pgs. 2822-2824/Vol. 3 at pgs. 2823-2824)]** have themselves clarified that this bedi was at the Ram Chabutara in the outer courtyard, thereby implying the Hindus were worshipping outside.

- iii. The existence of Masjid in the map attached to the Plaint, amounts to an admission on part of the opposite parties regarding the existence of the masjid.

V. FROM 1885-1934

27. It was averred that the disputed site was being constantly used by the Hindu pilgrims, and to support the contention the following documents were relied upon:-

- i. **Ex. 8, Suit No. 3:** Original Qabulyat (consent) by Jhingoo S/o Gaya in favour of Mahant Nirmohi Akhara regarding Sita

Koop on 4 Annas Stamp executed on 11.6.1900 along with its translation. [Pg. 70 @ Vol. 90]:-

- a) This document is an agreement pertaining to provision of water to the visitors from the Sitakup.
- b) It is relevant to note that this agreement pertains to Sitakup, which is outside the disputed premises. [Para 3001 @ pgs. 1664-1665/Vol. 2 of the Impugned Judgment]
- c) The inference which has been drawn from this document is that this arrangement was made to serve water to the Pilgrims. It is submitted that this document nowhere shows that these pilgrims were praying inside the disputed structure or in the inner courtyard and is hence irrelevant.

ii. **Ex. 49, Suit No. 4** Copy of the Tarmimi Khasra Mohalla Ramkot Ayodhya District Faizabad 1931 from the record of Nazool along with Hindi transliteration. [At pg. 1435 of Vol. II of the Impugned Judgment]

- a) This is the Nakal Khasra of Arazi No. 583. Relying on this document Nirmohi Akhara submitted that though in these records, the Masjid is identified but the possession has been noted of Mahant Raghunath Das.
- b) It is relevant to note that the details mentioned in entry 16, show that this possession was limited to Chabutara. Further the said entry also records that the Chabutara is famous as the Janambhoomi, once again indicating that it was the Chabutara which was all along being worshipped as the birthplace of Lord Ram.

VI. PERIOD AFTER 1934

28. Nirmohi has stated that Muslim parties have relied upon the following exhibits, which relate to the repair of the Mosque which was damaged during the 1934 riots, however the same does not prove that Muslims were in possession of the disputed site: -

- i. **Exhibit A-49:** An order was passed on May 12, 1934 whereby the Mohammadans were permitted to start the work of cleaning of Babri Mosque from Monday i.e. May 14,

1934, so that it could be used for religious purposes. [Pg. 124-125 @ Vol. 3]

- ii. **Exhibit A-43:** The Dy. Commissioner Faizabad passed an order on 6.10.1934 allowing the payment of compensation for damages to the Babri Mosque subject to any other objections. [Pg. 109 @ Vol. 3]
- iii. **Exhibit A-51:** An application dated February 25, 1935, was submitted by the contractor namely Tahavar Khan complaining about non-payment of his claim despite repair work having been performed in the Contract of Babri Masjid, along with houses that were built after riots. [Pgs. 127-128 @ Vol. 3]
- iv. **Exhibit A-45:** An order dated February 26, 1935 was passed by the Dy. Commissioner, Faizabad on application of Tahavar Khan directing the SDM Sadar to put in detailed bills for the workers entrusted to him and to report what should be paid. [Pgs. 115-116 @ Vol. 3]
- v. **Exhibit A-44:** Copy of estimate (dated 15.4.1935) of Tahavar/Zahoor Khan approved contractor PWD, Lal Bagh, Faizabad in relation to Babri Masjid Ayodhya. [Pgs. 111-114 @ Vol. 3]
- vi. **Exhibit A-48:** The Assistant Engineer PWD submitted his inspection report on 21.11.1935, stating that the work of repair of the Babri Mosque was done satisfactorily. [Pgs. 121-123 @ Vol. 3]
- vii. **Exhibit A-46:** Copy of the report of Mubaraq Ali, Bill clerk dated 27.1.1936 whereby the bill for the re-construction of mosque was put up. [Pgs. 117 @ Vol. 3]
- viii. **Exhibit A-47:** The Report dated January 29, 1936 of A.D. Dixon recommending a payment of Rs. 6825/12 for the repair work of Babri Mosque, Ayodhya. [Pgs. 119 @ Vol. 3]
- ix. **Exhibit A-52:** Complaint by Tahavvar Khan, Contractor dated April 30, 1936 to the Deputy Commissioner, Faizabad complaining about the certain claim disallowed by the PWD. [Pgs. 129-130 @ Vol. 3]

- x. **Exhibit A-50:** Letter of Tahawar Khan Thekedar dated April 16, 1935 regarding repair work in the disputed structure and the submission of bills of the same. [Pg. 126 @ Vol. 3]
- xi. **Exhibit A-53:** Application dated January 2, 1936, by Tahavvar Khan, Contractor for early payment of his dues in respect of repairs of Babri Mosque filed before the Tehsildar, particularly dealing with houses burnt in riots. [Pgs. 1169 – 1170 @ Vol. 78]
29. The Hon'ble High Court has at para 3100 @ pg. 1724 observed that these documents do not show that after the repairs the disputed structure was handed over the Muslims or they were allowed to offer Namaz therein. It is submitted that the first document mentioned above, i.e. Exhibit A-49 clearly mentions that mosque had been ordered to be cleaned up so that it could be utilised for religious purposes. Further, the Hon'ble High Court has nowhere doubted the fact that the disputed structure was being repaired for the benefit of the Muslim Community, in such circumstances it is absurd to conclude that after repairs, the disputed structure was not used for offering of Namaz.
30. Further this has to be read with the report of the Wakf Commissioner dated 10.12.1949 [Pgs. 1738-1739 @ Vol. II of the Impugned Judgment], wherein it has been recorded that Hindus were harassing the Muslims who were going to offer prayers in the Mosque and therefore a complaint be sent to the Deputy Commissioner so that nobody harasses the Muslims, going into the Masjid to offer Namaz. Further the Waqf Inspector also visited the Mosque on December 22, 1949 and on the basis of his visit, tendered a report dated December 23, 1949, wherein it has been mentioned that Friday Namaz was taking place regularly [Pgs. 1742-1743 @ Vol. II of the Impugned Judgment].
31. The above reports clearly establish that atleast Friday prayers were being offered.
32. On the basis of the facts mentioned in the report of the Wakf Commissioner, it has been argued by Nirmohi that: -
- a) Since there were Police personnel deputed outside the disputed structure, it was not possible that any untoward incident could have taken place in their presence.

- b) Namaz is only held on Friday and the mosque is locked at other times. The mosque is opened only for Friday namaz for 3-4 hours.
- c) Raghubar Das has been mentioned in the report showing that Nirmohi was in possession.
- d) Wakf Commissioner though mentions that he again visited the spot on December 23, 1949, he does not mention about shifting of idols.

33. In reply to the foregoing it is relevant to note that :-

- a) An FIR was filed on December 23, 1949 at 7pm by one Sub Inspector who had reached the disputed site on 7 am and learnt that *a mob of* about 50-60 person are breaking open the locks which were in the compound of the Babri Masjid and after crossing over the wall with the help of the stairs entered into the Masjid and installed the idol of Shri Bhagvan and inside and outside the walls wrote Shri Ram with green, red earth and yellow colour. It is relevant to note that this Sub Inspector who had lodged the FIR had received the information through a constable Mata Prasad. Therefore, the police personnel have themselves reported about placing of idols in the mosque. [Pg. 35 of Vol. 1 of the Impugned Judgment]
- b) In respect of Raghubar Das, it is reiterated that Nirmohi Akhara has taken contradictory stands in relation to him.
- c) The mosque would not lose its character of a mosque when Friday prayers are being continuously offered and the members of the Muslim Community were in possession of the keys of the lock.

VII. CAUSE OF ACTION

34. It has thereafter been submitted that the suit of the Muslims is barred by time as their cause of action arose on the following occasions: -

- a) Firstly in 1855 when Hindus took possession of Janamsthan
- b) In 1857 when the Chabutara was constructed
- c) After 1934 riots, since they were only allowed to have Friday prayers.

35. It is submitted that in 1855, after the alleged riots as reported in the Gazetteers the same gazetteers also report that British separated the places of worship of Hindus and Muslims by a grill wall and that the Muslims continued to pray inside the mosque.
36. Further, the first and second cause of actions, were both settled in the 1885 suit particularly when the appeal filed by Mahant Raghubar Das, was rejected on 18/26 March 1886. In this judgment, the Hon'ble District Judge categorically observed that the Chabutara belonged to the Muslims, even though it was observed that it was said to indicate the birth place of Lord Ram. **[See pgs. 4200-4201/Vol. III at pg. 4201]**

VIII. CONCLUSION

37. As per the Gazetteers quoted by Nirmohi (Carnegy, Nevill and Millet), it is clear that:-
- a) Till 1855, Hindus and Mohemmeddians alike used to worship in the Mosque- Temple.
 - b) Since British rule a railing has been put up to prevent disputes. It is within this railing that the mosque exists and that is where the Muslims pray. Whereas the Hindus pray outside the fence where they have raised a platform.
[See Carnegy Pg. 4062/Vol III of the Impugned Judgment; See Millet at Pg. 4067/Vol III of the Impugned Judgment and See Nevill at Pg. 4076/Vol. III of the Impugned Judgment]
38. Ram Chabutara in the outer courtyard was the birth place of Lord Ram:
- a) Judgment of the Hon'ble District Judge dated 18/26 March 1886 **[See pgs. 4200-4201/Vol. III at pg. 4201]**
 - b) Tieffenthaler mentions a bedi (cradle) and states that it was on this where Beshan (Vishnoo) was born in the form of Ram. **[Pg. 3089-3090 @ pg. 3090 of Vol. III of Impugned Judgment]** This has to be read with statement of DW 3/18 **[Pg. 10663/Vol. 58]** & OPW 9 **[Pgs. 2822-2824/Vol. 3 at pgs. 2823-2824]** who state that Ram Chabutara was also called Bedi. This shows that the Hindu belief was that Lord Ram was born on Chabutara.

39. Since 1934 regular Friday prayers have been taking place in the mosque and this has been admitted even by Nirmohi Akhara.
40. In view of the foregoing it is clear that there was no temple at the disputed site and that the disputed structure was a mosque where continuous namaz was taking place.

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