

**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**

A-84.

**SUMMARY NOTE ON SUIT NO. 5**

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

ADVOCATE ON RECORD: EJAZ MAQBOOL

## **SUMMARY NOTE ON SUIT 5**

### **I. PRELIMINARY**

- 1.1. This summary note on Suit 5 is on some salient points. It is not intended to be a substitute for either the detailed notes or the oral argument advanced over various days of oral argument
- 1.2. Cross references will be given to the assigned number of the corresponding Written Submissions

### **II. PLEADINGS AND APPEAL**

- 2.1. A look at the Pleadings shows:
  - a. Plaintiff Number 1 is the idol
  - b. Plaintiff number 2 is the Asthan Sri Rama Janma Bhumi
  - c. Plaintiff No. 3 is the Next Friend (Deoki Nandan Aggarwal).  
After his demise he was replaced by TP Verma (*an expert witness*)
- 2.2. What is clear from the pleadings is that Suit No. 5 is only a vehicle for the new Trust Ram Janma Bhumi Nyas (hereinafter referred to as Nyas) which was established in 1985.

The composition of the Nyas consisted of Mahatmas, Members of the Vishwa Hindu Parishad (VHP), who appointed 4 of their own and 10 others who included Justice Katju, Justice Deoki Nandan, Rajmata Scindhia. The other trustees also included members of the RSS and of various mandirs including Hanuman mandir. The shebait was not included.

Clearly, Plaintiff No. 1 was the idol (Bhagwan Sri Rama Lalla Virajman) and Plaintiff No. 2 was the Ram Janma Bhumi (hereafter Ram Bhumi. It was stated that they are both “juridical persons (with) a distinct personality of their own other than worshippers and sevaks...(who were) ... to some extent involved in seeking to gratify their own personal interests to control the deity”.

2.3. Thus, Ram Bhumi as a juristic personality was a special purpose vehicle to get rid of the past temple and build a grand temple for the future by and through the Nyas and to get rid of the shebait and put the management of the temple in the socio-political hands of the Sangh Parivar.

2.4. This was abundantly clear from prs.14 and 36 of the Plaint which stated:

(at pr. 14)

“...Further, the devotees of the plaintiff Deities are desirous in having a new Temple constructed, befitting their pristine glory, after removing the old structure at Sri Rama Janma Bhumi, Ayodhya.’ (emphasis added)

(at pr. 36)

*That the cause of action for this suit has been accruing from day to day, particularly since recently when the plans of Temple reconstruction are being sought to be obstructed by violent action from the side of certain Muslim Communalists.*’ (emphasis added)

The relief was similarly framed by identifying the defined bhumi area as Ram Bhumi and restraining others:

“(39) That the plaintiffs claim the following reliefs:

- (A) A declaration that the entire premises of Sri Rama Janma Bhumi at Ayodhya, as described and delineated in Annexures I, II and III, belong to the plaintiff Deities.
- (B) A perpetual injunction against the Defendants prohibiting them from interfering with, or raising any objection to, or placing any obstruction the construction of the new Temple building at Sri Rama Janma Bhumi, Aydhya, after demolishing and removing the existing buildings and structures

*etc., situate thereat, in so far as it may be necessary or expedient to do so for the said purpose.*

- (C) *Costs of the suit against such of the defendants as object to the grant of relief to the plaintiffs.*
- (D) *Any other relief or relief to which the plaintiffs may be found entitled."*

What seems clear is that there was a plan for "demolishing and removing the existing building."

2.5. It is submitted that in retrospect, there is a clear connection between establishing the Nyas Trust (1985), the promise to destroy the existing structure and build a new one (Pleadings in 1989), the Rath yatras of 1989-91, the demolition of 1992, the Acquisition Act of 1993 and the Presidential Reference of 1993. In turn, *Ismail Faruqui (1994) 6 SCC 360* paved the way for the revival of the Suits, the Lucknow decision of 2010 and the present proceedings. We are not establishing a casual connection, but concerned with the underlying purpose of Suit No. 5.

2.6. A question was: Why was this special purpose vehicle created? The reason was that Plaintiff No. 1 (the idol) was only the notional owner of the property while the shebait as manager had control and the exclusive right to pray. But, the Ram Bhumi (as is clear from the Pleadings, Appeals and arguments) claimed:

- a. an over-riding title of the area;
- b. invulnerable from any competing claim of title and possession;
- c. to ward off claims of adverse possession;
- d. defy acquisition;
- e. claim impartibility; and
- f. to ward off claims of limitation.

Such pleas were not available to the idol and the cause of action for Plaintiff No. 2 would continue until the new building was complete.

- 2.7. Another feature of the argument and in the appeal was that the Plaintiffs had the constitutional right of belief and worship under Article 25 of the Constitution which the Muslims did not have because their essential practices were outside India with mosques and churches having no constitutional protection in India, that is Bharat. This was a threat to secularism.

### III. JURISTIC PERSONALITY OF IDOLS, AREAS AND SHEBAITS

3.1. In this case, there were two juristic personalities:

- a. The idol which was governed by a restrictive legal regime managed by the shebait.
- b. The Ram Bhumi which was an all embracing juristic entity both legally impregnable and invulnerable to destroy the old buildings with impunity and build a temple under socio-political management.

3.2. In Hindu law there are two kinds of juristic personalities:

- a. Self revealed area in nature (e.g. *lingams in Kailash, undulating land in Kedarnath or charan looking steps in Gaya and so on.*)
- b. Human created artificial idols.

3.3. In both cases, there is inter-subjective belief, objectively something more than belief, namely some form of formal recognition with some religious ceremony (istha and purutha for idols and consecration for areas) as well as continuity of practice as well as belief.

Mere parikrama does not establish title. Parikrama is a form of practice not claim of ownership or domain as in ashwamedha.

- 3.4. Many cases were cited, however, detailed notes show that these cases were found wanting (as for example in the *Madura v. Alikhan Sabib (1931) 34 Law Weekly 340*, the Muslim properties were excluded. In the *Hukum Chand v. Maharaj Bahadur Singh (1933) 60 IA 313* (Parasvanasth case), there was no title with the Jains at all and certain parts had to be removed.

These cases have not been proved to be self revealed bhumis, but, were areas attached to temple.

*(All these cases have been discussed in Submission A81)*

- 3.5. Apart from belief no part of the area was a natural manifestation and even proof of belief was too intermittent and unreliable.

- 3.6. It has also been emphasized that the idol has only notional property rights.

Idol's human agent is the shebait who alone can manage and control the property and its affairs. In the event of the shebait not acting, or acting against the interests of the deity, or mismanaging or trying to appropriate the property and usufruct, a next friend can file. But, the Court must decide and permit the next friend by a conscious decision and examine if the next friend is of the same faith, a believer and is associated with the idol.

- 3.7. In the present case, the next friend is not a believer, belongs to the Nyas which intends to destroy the property, build a new temple, and take over the management, excluding the shebait.

- 3.8. We submit that the shebait's Suit No. 3 is barred by limitation. The cause of action began on 5 January 1950 and the suit was filed on 17 December 1959.

- 3.9. We further submit that Article 120 is attracted in Suit No. 3 because the pleadings and relief were directed for getting management and control from the officials.

At the same time, because the words "belong to" are in the plaint without any foundation of facts and the word 'possession' is used (once again without foundation) does not take away from the purpose, foundation, intermittent words and relief to extend the period of limitation.

- 3.10. The effort to bring the suit within the concept of 'continuing wrong' in Section 23 of the Limitation Act, it is submitted on facts and in law that no such case can be made out.
- 3.11. However, we also maintain that even if the shebait's Suit No. 3 is dismissed on grounds of limitation, that does not mean that the shebait ceases to be a shebait, or that he loses the right to sue, or that he loses the right of management and control, or that if the property is declared to the idol or bhumi, the property would be entrusted to someone other the shebait.
- 3.12. Finally, it is submitted that the Ram Bhumi's rights will not have a special regime of rights to oust all claims, but only the same or similar regime as the idol. Its ambitious invulnerable claims are not based on law or fact
- 3.13. From the various case laws, it is submitted:
- i. Deities can be created by (a) self manifestation and (b) created by humans
  - ii. In the former case, there must be (a) a manifestation (b) a belief and (c) an overt religious act by which the area is recognized for worship (d) continuous worship takes place
  - iii. As far as idols are concerned, the land must be given absolutely, it must be consecrated, prayer based on belief should continue. Technically, even if the exact prayers are not made, the consecration followed by worship may not be enough.
  - iv. Worshippers are beneficiaries. Whether a temple is public or private will depend on the belief and practice of the intended

beneficiaries and whether the temple is thrown open to the public.

- v. Belief is not the basis of juristic personality
- vi. Although it is claimed that no restrictions apply to janmabhumi by way of limitation, adverse possession, the right to sue and so on. Any such area would be subject to similar restrictions

3.14 The arguments advanced have been separately submitted earlier.

(See SUBMISSION NO. A81)

#### IV. PROOF OF BELIEF, DEDICATION, TRAVELLERS, GAZETTES AND INSCRIPTIONS

- 4.1. In this case, the only evidence is that of the travellers and gazettes. The majority judges have plainly discarded this as dependable proof. Shri Sudhir Aggarwal plainly says: (at Para 3672 @ pg. 2142/Vol. 2)

*What lie underneath? This question is of extreme complication ranging in a period of more than 500 years' of history. No clear picture emerges from various history books etc. In fact, the contemporary record did not answer the issues, one or the other way, with certainty but some record, authored after about 200 years i.e., 18<sup>th</sup> Century, state about existence of temple, its demolition and the construction of the disputed building, while some well known historians dispute it and some history books are silent.'*

That is the supposed reason for the digging and trenches was necessitated because these exhibits did not constitute liable proof.

ASI will be dealt with separately.

- 4.2. The reliance of the travellers and gazettes show intermittent belief but not to a janma bhumi. This belief accelerated in the 19<sup>th</sup> and 20<sup>th</sup> century amidst internecine fights, the Mutiny and riots before the takeover by the Imperial Raj from the Company. Virtually all Gazetteers affirm the physical existence of the mosque. None confirms janma bhumi as an area. This is a later invention.



- 4.3. It is also clear that, in law, gazetteers do not constitute proof in themselves and have only secondary or tertiary significance to corroborate.
- 4.4. A look at the pictures of 1950 and 1990, it is clear that the pandits have installed pictures of KK Nayyar (who refused to obey orders) and the Guru Dutt. Not only that, the pillars were defaced so as to hide the inscriptions which were not to any deity but fauna and flora. They were deliberately defaced.
- 4.5. The photographs clearly show that the words 'Allah' is to be found at various places.

Further, other inscriptions confirm that the nature and status of a mosque.

- 4.6. It was suggested that worshippers used to stand at the railing and face the railing, leave offerings for supposed idols in the 19<sup>th</sup> century. This is certainly not borne out by the Travellers or Gazetteers. The witnesses who affirm this are persons who deposed in 2000 CE after the Nyas was created in 1985, after the Suit was filed in 1989, after the rath yatras and after the demolition of 1992. Such statements are tailored to support Suit 5.
- 4.7. At the same time, there is no denial of the inscriptions with Allah written on them. Equally, the witnesses who claim to have recovered the Vishnu Hari inscriptions are contradictory about the recovery (OPW 8 Ashok Chandra Chatterjee) and the inscription was transcribed (OPW 10 Dr. K.V. Ramesh) after consultations with interested parties amidst contradiction. In any case, the inscriptions are equivocal about the incarnations of Lord Rama amongst whom Lord Rama was included and not as a special reference.
- 4.8. The arguments advanced have been separately submitted earlier.

(See SUBMISSION NO. A76, A80)

## V. EXHIBITS AND WITNESSES

5.1 The exhibits are of the following:

- i. The 133 exhibits filed by Plaintiffs in Suit 5
- ii. The 10 exhibits filed by Defendants in Suit 1
- iii. The 7 exhibits filed by Plaintiffs in Suit 3
- iv. The 20 exhibits filed by Plaintiffs in Suit 4
- v. The 52 exhibits filed by Defendants in Suit 4

5.2. After a tabular representation in which all exhibits are analysed with comments, it can be concluded:

1. In view of the foregoing, it is clear that more than half of the exhibits filed by Plaintiffs in Suit No. 5 have not even been referred to and/or discussed before the Hon'ble High Court or before this Hon'ble Court.
2. The only exhibits which have been relied upon before this Hon'ble Court are pertaining to Travelers, Gazetteers, and religious texts (like Skanda Puran and Ramcharitamanas) which, as demonstrated earlier, have not given any clear picture..
3. Lastly, reliance has been placed on the Vishnu Hari inscriptions and as demonstrated above, the recovery as well as the process of translation of the same is highly doubtful. Moreover, the said inscriptions do not show that the disputed site was the birthplace of Lord Ram.

5.3 The arguments advanced on Exhibits have been separately submitted earlier.

(See SUBMISSION NO. A75)

5.4 The Plaintiffs in Suit 5 have produced 19 witnesses, which can be categorized as follows:-

- I. Witness on Facts:
  - i. OPW 1 Mahant Paramhans Ram Chandra Das
  - ii. OPW 2 Shri Devaki Nandan Agarwal
  - iii. OPW 4 Harihar Prasad Tewari
  - iv. OPW 5 Shri Ram Nath Mishra Alias Banarsi Panda
  - v. OPW 6 Shri Housila Prasad Tripathi
  - vi. OPW 7 Ram Surat Tewari
  - vii. OPW 12 Shri Kaushal Kishore Mishra
  - viii. OPW 13 Narad Saran
- II. Witness in relation to Vishnu Hari Inscriptions
  - i. OPW 8 Ashok Chandra Chatterjee
  - ii. OPW 10 Dr. K.V. Ramesh
  - iii. OPW 15 Dr. M.N. Katti
- III. Expert Witness- Historians
  - i. OPW 9 Dr. T.P. Verma
  - ii. OPW 11 Dr. Satish Chandra Mittal
- IV. Expert Witness- Religious Matters
  - i. OPW 16 JagadguruRamanandacharya- Swami Ram Bhadracharya Ji
- V. Expert Witness- Archaeologists
  - i. OPW 3 Dr. S.P. Gupta
  - ii. OPW 14 Dr. Rakesh Tewari
  - iii. OPW 17 Dr. R. Nagaswami
  - iv. OPW 18 Sri Arun Kumar Sharma
  - v. OPW 19 Sri Rakesh Dutta Trivedi

5.6 After analysing all the witnesses, it is concluded as follows:

- The statements made by the witnesses on behalf of Plaintiffs of Suit 5 are unreliable and are unable to demonstrate that the

place beneath the central dome is the birthplace of Lord Rama or that the same was believed to be so by Hindus. Further, the fact that the next friend who is the Plaintiff No. 3 in the present suit, was not even an idol worshipper; raises doubts on his ability to be a next friend and/or represent a deity. In addition to the foregoing, the testimony of the witnesses pertaining to the Vishnu Hari inscriptions, raises serious doubts about the discovery of the slab on which the inscriptions were found and even the process of its translation. Lastly, the expert historians produced by the Plaintiffs (Suit 5) were not Medieval historians and therefore their statement cannot be considered to be opinion of an Expert under Section 45 of the Evidence Act.

- 5.7 The arguments advanced on Exhibits have been separately submitted earlier. (See SUBMISSION NO. A78)

## VI. LIMITATION AND ADVERSE POSSESSION

- 6.1 For the Plaintiffs side, it has been argued that Section 10 of the Limitation Act applies because it is a specific trust. In the Submission, the changes in the Section after *VidyaVaruthi Thirtha v. Balusami Ayyar, (1921) 48 IA 302* have been shown to show that Section 10 does not apply in this case.

*(This case have been discussed fully in Preliminary Submission A44)*

- 6.2. It is further shown by Mr. Jilani and by the case laws that there was no occasion for adverse possession between 1934-22/3 December 1949.
- 6.3. A detailed submission has been made that rights cannot be based on an illegality. In this case, the illegalities include
- Attacking the mosque in 1934;
  - Preventing Muslims from prayer under coercion;
  - Trespass by putting idols there;

- Between 1950 and 1990 defacing the pillars and putting in pictures;
- Forming a trust with the specific purpose of altering the status quo;
- Filing a plaint with a new special purpose vehicle and expressly stating that the existing building will be destroyed and a new temple erected under new managements for capturing the future by making spurious reference to the past;
- Destroying the mosque.

6.4. No benefit can be taken from these illegalities.

6.5 The arguments advanced have been separately submitted earlier.

(See SUBMISSION NO. A68, A82)

**VII. SPECIFIC REPLIES HAVE BEEN GIVEN TO THE ARGUMENTS OF ADVOCATES PN MISHRA , HS JAIN SUIT 3 RANJIT KUMAR IN SUIT 1**

7.1. Although this response is to the arguments of three learned colleagues, there is some commonality between them. However, they are collated into a residuary category, not denying the individuality of each submission.

**(A) PN Mishra, Advocate**

7.2. Shri Mishra made the following arguments:

- (a) On the regime argument: The regime inherited by the British from the Nawab was one of Darul-i-Islam which was binding on the British and now on the Indian legal system.
- (b) On the Furman argument: Furmans' issued by the Nawab regime were both Muslim law and the law of the land to be enforced by the British.

- (c) The Exact location argument: It was possible from Baker's co-ordinates to locate the exact birthplace of Lord Ram.
- (d) The Babur-Aurangzeb Argument: Travellers accounts suggest that the mosque was not build by Babur when a temple pre-existed on the site but which was destroyed by Aurangzeb.
- (e) The Interpolation argument: The inscriptions were interpolated to add an Islamic dimension
- (f) The Koranic argument: The mosque was not a valid mosque because it did not correspond to the sharia including the hadith.

7.3. The regime, furman and Koranic arguments are inter-linked. Essentially, they argue that the British had to enforce the Darul-i-Islam of Wajid Ali Shah, furmans are law and anything contrary to the Koran and its Hadith is necessarily illegal making the regime un-Islamic.

7.4. It is respectfully submitted that in the British period:

- a. Indo-Anglian law represents a legal regime change through statute and by courts. In the latter case, Hindu and Muslim law were absorbed into Indo-Anglian law under the aegis of the doctrine of justice, equity and good conscience which continues through Article 372 of the Constitution. Under the Indo-Anglian system, furmans are evidence. The complex question of applying the sharia is not to question the temporal statements of law over a spatial area. The attempt to de-islamicise regimes and actions of people as un-Islamic is a theological endeavour. The temporal power has been recognized as 'law'. Matters of theological significance are to be borne in mind. The distinctions between validity of a regime have to be borne in mind.

- b. Baker's work has not been accepted as reliable by the Lucknow Bench and its pointers to the exact place of Lord Ram's birth place are speculative, as indeed the use of Tiffenhailer on Aurangzeb destroying a temple or building a mosque. The question of inscriptions being manipulated has been answered separately

**(B) HS Jain, Advocate**

- 7.5. Shri HS Jain's submission was that after the Constitution came into being Hindu law was to prevail to create a new India based on Hindu ideas. This was responded to by showing the secular foundations of Constitution which did not privilege any faith in particular.

Shri HS Jain represented the Hindu Mahasabha which has a nexus with the initiatives of the Nyas of which the Mahasabha wishes to be managerially involved.

**(C) Shri Dhingra, Advocate**

- 7.6. Shri Dhingra's argument on an SLP (Diary No. 22744/2017) filed in 2017 to overturn a decision of 1946 that this was a sunni mosque. Allegedly, that decision rested on a finding that the registration of the Sunni mosque was technically wanting because details of the proper land entries were not entered into with specificity according to a decision of 1966.

*Firstly*, this does not invalidate the Sunni nature of the mosque  
*Secondly*, the SLP suffers not just because of the time lapse from 1946-2017, but also because there is a delay from 1966 and because they were aware of the litigation in which they did not participate. The stance of the Shia Board to give away land that does not belong to them is unworthy and illegal.

- 7.7 The arguments advanced have been separately submitted earlier.

(See SUBMISSION NO. A83)

## VIII. CONCLUSION

- 8.1. The dominant feature of Suit 5 is Plaintiff No. 2 (the janmabhumi) on which the pleadings, arguments, exhibits and witness statements have been based.
- 8.2. Briefly,
  - a. The essential core of the argument in the Plaint is that there is a need to destroy the existing structure and replace it with a new grand temple in a new <sup>area</sup> of Hindu faith.
  - b. The juristic regime attached to Janmabhumi is that it will be legally invulnerable and unassailable from all other claims whether emanating from any other claim by other religious or private group or government. No claim of adverse possession can be made against it because it is sui generis (*the word used for the land was res nullius- which is technically wrong*) and the area would be impartible. No limitation can apply. We submit that such a regime is self styled and that the regime applicable to idols will apply.
  - c. The entire argument was based on belief from scattered sources such as Travellers accounts and Gazetteers which have been found to be inconsistent and inconclusive. As, indeed, the Skanda Purana.
  - d. It is submitted that there were no idols in the Vedic period and tanks, trees etc were revered but not possessed of juristic personality.  
After that, juristic entities were of two kinds:
    - i. self manifestations of the deity in nature;
    - ii. idols by human intervention.
  - e. It is submitted that though both juristic personalities are based on belief, they must be acted upon and consecrated and/or supported by practice in a concrete sense.



- f. It is submitted that no claim can be based on illegalities which in this case are many and summarized. In this case the purpose of the nyas is to destroy the existing structure which was destroyed.
- g. Support has been given to this by constitutional claims for Hindus but denied for Muslims on arguments that defy secularism. It is submitted that such claims are against the secularism of the Constitution.
- 8.3. Arguments relating to the ASI excavation, res judicata and issue estoppel and theological aspects will be dealt with and summarized by others.
- 8.4 We end with Firaq's Tribute to India's unparalleled diversity.

*'Sar-zamin e-hind par aqvam-e-alam ke firaq*

*Quafile baste gae, hindostan banta gaya'*

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