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IN THE SUPREME COURT OF INDIA
[CIVIL APPELLATE JURISDICTION]

CIVIL APPEAL NO. 2894 of 2011

&

CIVIL APPEAL NO. 7226 of 2011

IN THE MATTER OF:

MOHAMMAD HASHIM (DEAD) THROUGH LR ...APPELLANT

VERSUS

MAHANT SURESH DAS AND ORS. ...RESPONDENTS

&

OTHER CONNECTED APPEALS

S. No.	Particulars	Pages
1	I. SHORT LIST OF DATES FOR ASI REPORT, 2003	1-5
2	II. APPOINTMENT OF ASI FOR EXCAVATION	6-10
3	III. SUMMARY OF RESULTS OF THE ASI REPORT IS NOT ATTRIBUTED TO AN AUTHOR	11-13
4	<u>ANNEXURE A-1 (COLLY)</u> Copies of two Orders both dated 01.08.2002	14-16
5	<u>ANNEXURE A-2 (COLLY)</u> Copies of two Orders both dated 05.03.2003	17-23

By

MS MEENAKSHI ARORA, SENIOR ADVOCATE

ADVOCATE-ON-RECORD : M.R.SHAMSHAD

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I. SHORT LIST OF DATES FOR ASI REPORT, 2003

- | | |
|------------|--|
| 01.08.2002 | The High Court directed ASI to get the suit premises (disputed site) surveyed by Ground Penetrating Radar or Geo-Radiology (hereinafter referred to as 'GPR') and obtain report ¹ . No specific objection by any party except OOS4/D2, Paramhans Ramchandra Das and OOS4/D22 Umesh Chandra Pandey ² . |
| 23.10.2002 | Objections to GPR Survey decided by the High Court. No substance found in the objections of Paramhans Ramchandra Das and Umesh Chandra Pandey ³ . |
| 26.11.2002 | High Court permitted 'M/s Tojo Vikas International (Pvt.) Ltd.' to visit the site and submit a report by 12.12.2002. ⁴ |
| 09.12.2002 | M/s Tojo Vikas International (Pvt.) Ltd. submitted its Site Inspection Report. |
| 17.02.2003 | M/s Tojo Vikas International (Pvt.) Ltd. submitted its Final GPR Report which concluded that there were 184 anomalies (possible structures) 0.5 to 5.5 meters in depth that could be associated with ancient and contemporaneous structures such as pillars, foundations walls slab flooring, extending over a large portion of the site ⁵ . |
| 05.03.2003 | The High Court considered the parties' objections to the GPR Report and directed the ASI to excavate the site, with conditions. One condition was that the area where the Idol was installed and the radius of 10 feet therefrom was not to be disturbed and that status quo with regard to <i>Puja</i> and <i>Darshan</i> was to be maintained. The work was directed to be commenced one week from the date ⁶ . |

¹ Impugned Judgement, Vol 1, pg. 219, para 212

² Impugned Judgement, Vol 1, pg. 220, paras 213, 214

³ Impugned Judgement, Vol 1, pg. 223

⁴ Impugned Judgement, Vol 1, pg. 224

⁵ Impugned Judgement, Vol 1, pg. 225

⁶ Impugned Judgement, Vol 1, pg. 225, para 216

- 10.03.2003 The ASI Team reached Ayodhya.
- 11.03.2003 On application by parties, the High Court gave further directions so as to keep the parties in confidence of the excavation work. Directions were also passed that periodic progress reports were to be submitted by the ASI ⁷.
- 12.03.2003 Excavation starts at the site. ⁸
- 13/20.3.2003 ASI submits list of the 14 member team and labour force that would excavate the site. It also submitted a commencement note detailing the work carried on between 12-16.03.2003. Few bone pieces found. Excavation was shifted as a cement floor was found in trenches that were initially planned to be excavated⁹. This cement floor was later detailed as being the floor of the demolished Mosque¹⁰.
- 18.03.2003 Muslim parties sent a letter to Mr. BR Mani, Team Leader requesting that appropriate number of Muslim laborers be included in the team excavating the site.
- 20.03.2003 Muslim parties file CMA No.18/2003 for Review and Recall of Order dated 05.03.2003 passed by the High Court, stating that the report submitted by M/s Tojo Vikas had not been approved and that no order was passed on the admissibility of the said report, hence direction for excavation by ASI was not justified and must be reviewed.
- Muslim parties filed CMA No. 19/ 2003, requesting that - stratification is a key issue and must be dealt with; immediate recording of findings ought to be done appropriately including organic materials like bones, seeds, et al; colour photographs ought to be supplied on payment to the parties; the ASI Team and labours ought to comprise of equal proportion of Hindus and Muslims; ASI is under the direct control of the BJP Minister of the Central Government, etc¹¹.
- 21.03.2003 ASI filed a brief progress report wherein the Team leader B R Mani assured that arrangements have been made to collect the samples of soil, mortar, carbon (for C14 dating), pottery (for Thermoluminescence dating), grains and pollens (for palaeo botanical studies) and bone (for study of faunal remains). A lime floor and various antiquities including human figurines (parts thereof) had been discovered. It was noted that GPR survey line passed through the area where the eastern wall was located but

⁷ Impugned Judgement, Vol 1, pg. 226, para 219

⁸ Impugned Judgement, Vol 1, pg. 227, para 221

⁹ Impugned Judgement, Vol 1, pg. 227, para 221

¹⁰ Impugned Judgement, Vol 1, pg. 231, para 225

¹¹ Impugned Judgement, Vol 1, pg. 228, para 223

failed to detect it even though it was 40cms in height and at a depth of 45cms. Further, a 104cm thick enclosure wall was not discovered in the GPR survey. Similarly, nothing but dirt (earth) was discovered in an area where the GPR survey had revealed a huge flat buried surface ¹².

23.03.2003 ASI filed a brief progress report¹³. It noticed three structural phases. Eastern wall was constructed over a pre-existing wall. 2 months and 15 days extension sought for excavation and report respectively.

26.03.2003 CMA No.18/2003 that had been filed by the Muslim parties for review and recall of Order dated 05.03.2003 was dismissed by the High Court on the ground that all objections had already been decided¹⁴.

The High Court decided CMA No. 19/ 2003 vide Order dated 26.03.2003 and inter-alia passed directions for general survey of the site and layout of the trenches, in presence of the contesting parties or their counsel or nominees. Further, a direction was given to the ASI team to maintain a record of the depth and the layer of the finds recovered.

Further directions were given by the High Court inter alia to ensure adequate representation of both the communities in the labour force. Further, at the request of the ASI in CMA No. 21/2003, working hours at the site were modified to 9AM-6PM. The ASI had also requested that (1) digging be done only to an extent of 5-6 feet, keeping in view that it had been contended that the temple had been demolished in 1528 and (2) no excavation be done on the area covered by the cement floors. Both requests were declined by the High Court ¹⁵

07.04.2003 ASI filed CMA No. 27/2003 requesting extension of time by 2 months for excavation and 15 days thereafter for preparing report.

08.04.2003 Muslim parties file objections to ASI's CMA filed the previous day and also CMA No. 28/2003 complaining of non-observance of Court's Orders dated 26.03.2003 inasmuch as inadequate representation of the Muslim community in the labour force at the excavation site, only 20-25% of bones being discovered are being recorded and that too improperly, etc¹⁶.

¹² Impugned Judgement, Vol 1, pg. 232-33, para 226

¹³ Impugned Judgement, Vol 1, pg. 232

¹⁴ Impugned Judgement, Vol 1, pg. 228, para 222

¹⁵ Impugned Judgement, Vol 1, pg. 235, para 228

¹⁶ Impugned Judgement, Vol 1, pg. 237, para 229

- 10.04.2003 CMA No. 28/2003 decided by the High Court directing that the parties could submit their grievances to the observers appointed by the High Court. CMA No. 27/2003 was decided by granting 5 weeks additional time for excavation work ¹⁷.
- 23.04.2003 ASI filed interim report alongwith CMA No. 33/2003. The interim report stated that under/near the Ram Chabootra, a chamber was found in the 5th level, on which a polished stone had been placed, that may indicate an area of importance. Also, one decorated stone piece was found in the foundation wall. 11 squarish pillar bases were found some of which had been sealed by the Mosque's floor.¹⁸ [Report extracted]
- 01.05.2003 The Muslim side filed Objections to the Interim Project report dated 23.04.2003 and also CMA No.35/2003 praying for a direction that the ASI finish the excavation work by 10.05.2003, as the progress of the excavation over the last 2 months had been very slow.
- 03.05.2003 Mr. BR Mani, sought permission from the Observer to open sealed packets for preparation of final report their study, drawing, etc. Various parties opposed the request before the Observer, with the contention that only the Court could grant such permission¹⁹.
- 22.05.2003 The High Court considered the application dated 03.05.2003 of the Team Leader and considering the suggestions of the parties, passed directions with regard to the un-sealing and re-sealing of the packets²⁰.
- In CMA No.41/2003 filed by OOS4/D3, Nirmohi Akhara, the High Court clarified that the District Administration would not raise any construction on the site in question and also passed further directions that the Team Leader of the excavation, Mr. B R Mani was to be replaced. It was also directed that future reports would state the trenches where the digging was done and the extent thereof²¹.
- The Muslim parties had also sought permission vide CMA No. 43/2003 to inspect the trenches, take scrapings and check the stratification given by the ASI. Permission was granted except on taking scrapings.

¹⁷ Impugned Judgement, Vol 1, pg. 238-240, para 230

¹⁸ Impugned Judgement, Vol 1, pg. 240-242, para 231

¹⁹ Impugned Judgement, Vol 1, pg. 244, para 234

²⁰ Impugned Judgement, Vol 1, pg. 244, para 234

²¹ Impugned Judgement, Vol 1, pg. 245, para 235

- 06.06.2003 Interim Report of the ASI was filed in the High Court, it interalia stated that 8 anomalies, as per the GPR were confirmed after excavation, but 14 were not found²².
- Interim Report dated 06.06.2003 was objected to by the Muslim parties.
- 03.07.2003 Objections of the Muslim Parties disposed of by the High Court and further direction given that the ASI need not file further interim reports and rather should file its Final Report²³.
- ASI's CMA No. 53/2003 seeking further time was also opposed by the Muslim parties but the High Court permitted the ASI to file its Final Report on or before 27.08.2003²⁴.
- 08.08.2003 The High Court gave further directions after completion of excavation work but before preparation of Final Report, regarding the preservation of artefacts and the trenches of the excavation, site visits, copies of drawings and maps, etc²⁵.
- 22.08.2003 ASI submitted its Final Report and records before the High Court.
- 25.08.2003 ASI's Final Report filed on 22.08.2003, came up for consideration before the High Court. Parties were given copies and liberty to file objections.
- 08.10.2003 Objections filed by some Muslim parties including Sunni Waqf Board and Md. Hashim²⁶. [Objections have been extracted in the said para]
- 03.02.2005 High Court held that the objections and the Final Report would be considered and decided in light of other evidence²⁷.
- 04.12.2006 High Court vide Order dated 04.12.2006 observed that the parties cannot impose on it to call a Court's Witness, and as such discharged the witness (one Dr. Bhuvan Vikram Singh) without recording his deposition. Thus, no party examined the representatives of the ASI.

²² Impugned Judgement, Vol 1, pg. 249, last part of para 237

²³ Impugned Judgement, Vol 1, pg. 249, para 238

²⁴ Impugned Judgement, Vol 1, pg. 249, para 239

²⁵ Impugned Judgement, Vol 1, pg. 249, para 240

²⁶ Impugned Judgement, Vol 1, pg. 252, para 242

²⁷ Impugned Judgement, Vol 1, pg. 253, para 244

II. APPOINTMENT OF ASI FOR EXCAVATION

1. The High Court called for the Report from the ASI on an important issue arising in the suits, namely, whether there was any temple/structure which was demolished and mosque was constructed on the disputed site.
2. Therefore, 01.08.2002, the High Court directed ASI to get the suit premises (disputed site) surveyed by Ground Penetrating Radar or Geo-Radiology and obtain a report. The Order dated 01.08.2002 reads as under:

"The basic issue in all the suits is as to whether there was a Hindu temple or any Hindu religious structure existed and the alleged Babri Masjid was constructed after demolishing such temple at the site in question.

Issue No.I (b) in O.O.S. No. 4 of 1989 Sunni Central Board of Wakf Vs. Sri Copal Singh Visharad reads as under:- Whether the building has been constructed on the site of an alleged Hindu Temple after demolishing the same as alleged by defendant No.13?"

Issue No. 14 in O.O.S. No. 5 of 1989 Bhagwan Sri Ram Virajman and others Vs. Rajendra Singh and others reads as under:- Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma Sthan Temple at its site?"

The Hon'ble President of India had referred the following question to the Supreme Court under Article 143 of the Constitution:- Whether a Hindu Temple or any Hindu religious structure existed prior to the construction of the Ram Janm Bhoomi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

The Archaeological Science can help to resolve the question. In the modern age the Archaeological Science has achieved the great accuracy and points out from the excavation the past history particularly in regard to the past existence of the construction. Sri D Mandal in his Book "AYODHYA ARCHAEOLOGY AFTER DEMOLITION" has opined as follows:-

"However, archaeology can answer with a considerable degree of certainty, many questions about various past activities of people, for which material evidence is available. It is for this reason that archaeological research continues and is of importance. It is believed that sufficient archaeological material is available regarding the temple-mosque issue, pre-empting the need for further excavations at Ayodhya." (page 16)

He further states that "Archaeology does not generally deal with super structures, as these seldom remain standing and awaiting excavation. All that usually remains of structures is their foundations. It may well be that demolition notwithstanding, the remains of the foundations of the walls of the mosque are still in situ." (page 52)

If there was any temple or religious constructions on the disputed site or if it ever existed, foundation can be traced by excavation.

If it is ultimately decided to excavate the disputed land, in that event the excavation will be done by the Archaeological Survey of India under the supervision of five eminent Archaeologists (Excavators), even though retired, including two Muslims and the following procedure may be adopted.

1. *The videography of excavation work be done and if any artefacts are found, their photographs (coloured as well as black and white and slides) may be taken. Such artefacts/materials, if found, may be kept under the custody of the State of U.P.*
2. *Complete documentation of sites, artefacts be done properly.*
3. *The debris of disputed structure as existing after its demolition shall be removed.*
4. *The excavation or removal of the debris may be done between 9.00 AM to 5.00 PM. The Court may appoint observer for the excavation work.*
5. *At present at the disputed site the idol of 'Shri Ramlala' has been placed and its devotees are worshipping, it may be placed at the Chabutra situate east to the site till the excavation work is complete.*

Before the final orders are issued in above terms, all the parties are invited to submit in writing, within two weeks, their views/suggestions.

We make it clear that the above proposal in regard to excavation is tentative till final decision is taken on this issue.

In the meantime before excavation, the Archaeological Survey of India will survey the disputed site by Ground-Penetrating Radar or Geo-Radiology and obtain the report with the aid including financial assistance by the Central Government of India."

[Copy of Order dated 01.08.2002 is annexed herewith as Annexure 1]

3. On 17.02.2003, M/s Tojo Vikas International (Pvt.) Ltd. submitted its Final GPR Report which stated the presence of a variety of anomalies ranging from 0.5 to 5.5 meters in depth that could be associated with ancient and contemporaneous structures such as pillars, foundations walls slab flooring, extending over a large portion of the site. The relevant portion of the Report is extracted hereinunder:

'9. In conclusion, the GPR survey reflects in general a variety of anomalies ranging from 0.5 to 5.5 meters in depth that could be associated with ancient and contemporaneous structures such as pillars, foundations walls slab flooring, extending over a large portion of the site. However, the exact nature of those anomalies has to be confirmed by systematic ground truthing, such as provided by the archaeological trenching'

[Impugned Judgement, Vol 1, pg. 225, para 215]

4. The High Court upon considering the GPR Report and Objections thereto passed the Order dated 05.03.2003, and thereafter, the ASI was directed to excavate the site of the Suit Premises. The relevant parts of the Order dated 05.03.2003 are extracted below:

Anomali for 184 Tojo

Anomali for 39

ASI

'One of the important issues in the suit is whether there was any temple/structure which was demolished and mosque was constructed on the disputed site. We took the view that archaeological evidence will be of importance to decide such an issue. We had made a suggestion in regard to excavation of the site in question by an order dated 1.8.2002 and invited the suggestions from the parties in this regard. It was further observed that till excavation order is passed the Archaeological Survey of India will get surveyed the disputed site by Ground Penetrating Radar and Geo-Radiology and will submit its report in this regard...'

'...1. The first objection is that the report submitted by Tojo-Vikas International (Pvt.) Limited cannot be read as substantive evidence in the suit unless it is duly proved in accordance with law. It is urged that the persons who have prepared the report must be examined in the Court and secondly, the data collected by Tojo-Vikas International (Pvt.) should be made part of the record...'

'...It is only guidance to an Archaeologist where to excavate. We are not recording any finding in regard to any foundation/construction on the basis of the report submitted by Tojo-Vikas International (Pvt.) Limited. The report itself states that the exact nature of anomalies/objects has to be confirmed by systematic truthing such as provided by archaeological trench...'

[Order dated 05.03.2003 is annexed herewith as Annexure 2]

- No finding*
5. Thus, on the basis of Orders dated 01.08.2002 and 05.03.2003 it is apparent that the ASI had to submit a report, after excavation as to 'whether there was any Hindu temple/structure which was demolished and if the mosque was constructed thereafter'.
 6. Even though the ASI Final Report, when referring to the High Court's directions does reproduce the observation of the High Court that archaeological evidence will be of importance to decide the issue whether there was any temple/structure which was demolished and mosque was constructed on the disputed site, does not return any findings on demolition of a temple and construction of the mosque in Chapter X. Summary of Results. [Pg. 345-349, Vol 84]. Thus, it is submitted that the only conclusion that can be drawn is that the ASI Report is inconclusive.
 7. The Plaintiff case of Suit 5 is that

'...23. That the books of history and public records of unimpeachable authenticity, establish indisputably that there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janma Bhumi, Ayodhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat, by the force of arms, by Mir Baqi, a commander of Baber's hordes. The material used was almost all of it taken from the Temple including its pillars which were wrought out of Kasauti or touch-stone, with figures of Hindu gods and goddesses carved on them...

... The Janmasthan was in Ramkot and marked the birthplace of Rama. In 1528 Babar came to Ayodhya and halted here for a week. He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque...

[Para 23, Pg. 234@246, Vol 72]

8. It may be pertinent to note that before the filing of Suit No. 5, there is no reference to this theory of a Temple being demolished to construct the erstwhile Mosque on the suit premises. Further relevant is that Suit 5 was filed 39 years after Suit No. 1. Thus, for almost 40 years of the present litigation, there was no averment towards temple destruction before the Trial Court. Thus, in the absence of the Report stating that a Hindu Temple existed at the suit premises till 1528, such a finding not being in support of the Plaintiff case of Suit 5, should not be given any evidentiary value.
9. The High Court had passed interim orders on the admissibility/reliability of the ASI Report: These two Orders put conditions on the Final Report.

'244. This Court after hearing the parties, vide its order dated 3.2.2005 held that the objections are basically such which can be considered and decided in the light of other evidence, which may come up before the Court. The objections against the report have to be considered before ASI report is acted upon but that situation will arise only when the Court would decide the matter finally. Therefore, the Court held that the ASI report shall be subject to the objections and evidences of the parties in the suit and all this shall be dealt with when the matter is finally decided.

245. An application was filed by plaintiffs (Suit-5) requesting to examine Dr. Bhuvan Vikram Singh and, accordingly, he was summoned to depose his statement. He filed an application no. 25(o) of 2006 requesting that he may be summoned as a Court's witness and not that of any party since he was a party to the excavation team and the said excavation was conducted under the order of this Court, hence he was not willing to depose his statement as a witness of any party to the suit. This application was not opposed by the plaintiffs (Suit-5) and in fact, learned counsel made a statement that he does not propose to examine Dr. Bhuvan Vikram Singh as witness of plaintiffs (Suit-5). He, however, insisted that Dr. Bhuvan Vikram Singh should be treated as a Court's witness and be allowed to be examined accordingly. This question was considered by this Court vide order dated 4.12.2006 and it was observed that this Court has discretion to call any witness and examine him as Court's witness but that situation cannot be imposed upon the Court by a party to the suit by filing an application requesting to summon a witness and then to press to treat the witness as Court's witness. Whenever the Court shall feel it expedient or necessary it may exercise its power by summoning a witness as a Court's witness but such a discretion cannot be fastened upon the Court by a party to the suit. Since the plaintiffs (Suit-5) was also not inclined to examine Dr.

Bhuvan Vikram Singh as its witness, the said witness was discharged without recording his deposition.

[Paras 244-245, Pg. 253-254, Vol I, Impugned Judgment]

10. The High Court had clarified only the Final Report would be considered as substantive evidence.

'We clarify that we had only asked for the progress report in the sense as to what extent excavation work has been done to assess as to when the work may be completed. (1) We are not taking into consideration any opinion expressed in regard to the merit of the matter. This report will not be taken as a substantive evidence in the case. It is only the final report that will be taken as an evidence on record which will be subject to the objection and evidence which may be led by the parties.'

[Impugned Judgement, Para 233, Pg. 243-244, Vol I]

11. Thus:

- a. Only the ASI's Final Report was to be considered as substantive evidence as per the High Court Order dated 22.05.2003.
- b. The ASI's Final Report was subject to the objections of the parties in the suit and the same was decided at the time of final hearing as per Order dated 03.02.2005.
- c. The final ASI Report is a piece of evidence, to decide the issues:
 - i. Issue No.I (b) in O.O.S. No. 4 of 1989
'Whether the building has been constructed on the site of an alleged Hindu Temple after demolishing the same as alleged by defendant No.13?'
 - ii. Issue No. 14 in O.O.S. No. 5 of 1989
'Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma Sthan Temple at its site?'

12. The plaintiffs of Suit 5, filed Application No. 25(O)/2006 to examine one Dr. Bhuvan Vikram Singh, but insisted that the said witness be called as a Court's Witness. The High Court in terms of Order dated 04.12.2006, observed that parties cannot impose on it to call a Court's Witness, and as such discharged the witness without recording his deposition. The Plaintiffs of Suit 4 being faced with same dilemma, did not examine the ASI's Team as then, the Plaintiffs would be bound by their Examination in Chief. Thus, no party examined the representatives of the ASI.

SUMMARY OF RESULTS OF THE ASI REPORT IS NOT ATTRIBUTED TO AN AUTHOR.

1. The report of ASI is divided into various chapters, ending with a summary and appendices.
2. The index and the headnote to the report clearly indicate the authors of those chapters. Significantly, the Summary of Report i.e chapter 10, which is the significant analysis of the report of various chapters (contributed by different group of authors) is not attributed to any of the team members or for that matter even the team leaders.
3. The readers of the ASI Report are completely in the dark as to who analysed the entire data in the Report and came to the conclusions in the said 'Summary of Results'.
4. The Plaintiffs in Suit 4 as well as others had objected to the Summary of Results not being attributed to any named author [see para 242, pg. 252 Vol I] as under:
 - a. Objections of Plaintiffs No. 1, Sunni Waqf Board/Suit 4 in CMA No. 107(0)/2003, Annexure A-216, Pg. 1878@1918, Para 15.2, Vol 13, which reads as under:

'15.2 That since the "Summary of Results(P.P. 268-272) is not based upon the archaeological finds and material, no member of the ASI Team takes responsibility for the same and that is why Chapters I-IX are ascribed to one or more authors, but not so the last chapter, X (Summary of Results)'
 - b. Supplementary Objections of Md. Hashim, Defendant No. 5/Suit 5 in CMA No. 18(0)/2004, Annexure A-222, Pg. 1983@1985, Paras 6, 7 and 8, Vol 13.
 6. *That besides the above, the ASI report in two volumes, the IInd volume having plates etc. the first volume inter-alia contains 10 chapters including Chapter 1- Introduction and Chapter 10th Summary of Result. The Chapter 1 introduction as per the report is by Shri B R Mani alone while the other six chapters have been written jointly by two, three more officials and till this date, it has not been indicated as to who is the author of Chapter 10.*
 7. *That the summary of results is not inconsonance with the observations made in Chapter 1 to 9 and as such, with this angle also, the person who has author Chapter 10 is essentially required to be known with reasons for such disagreement.*
 8. *That law provides that the report has to be signed by the person making the report and if it is by more than 1, it has to bear the signatures of all such persons. In the instant matter, there is no signature of anybody and in the absence of the signature, the report cannot be termed to be report at all as provided Order 26 CPC'*

- c. Objections of Haji Mahmood and Haji Abdul Ahed, Defendant Nos. 6/1 and 6/2 of Suit 3 against CMA No. 26(0)/2004, Annexure A-229, Pg. 2007@2010, Paras 5, Vol 13.

'...but in the Summary of Results which is not owned by any member of the excavation team, the ASI has tried to produce a "Hindu Temple"

- d. Supplementary Objections of Haji Mahmood and Haji Abdul Ahed, Defendant Nos. 6/1 and 6/2 of Suit 3 in CMA No. NIL/2003, Annexure A-230, Pg. 2011@2014, Paras 13, Vol 13.

'13. That the names of authors of all the chapters, except, chapter X, are mentioned in the report, but the name of the author of Chapter X (Summary of result) is missing. This omission appears to be intentional, as nobody from among the ASI team appears to own the authorship of this false and manipulated chapter.'

5. Under Order XXVI: Rule 10(1) or Rule 10A(2) the Report has to be signed by the Commissioner. Relevant portions of Order XXVI read as under:

10. Procedure of Commissioner

(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

10A. Commission for scientific investigations

(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.'

6. Mr. Jayanti Prasad Srivastav, D.W. 20/5 states that:

"Conclusion in an excavation report is arrived from the finds, as reported in various chapters contributed by the team members. Before arriving at the conclusion, all the members of the team sit together and discuss about various items included in the report and then a conclusion is drawn. This is normal practice in almost all excavations adopted in the matter of all excavations." [Pg. 11688, Vol. 62]

"... It is not possible to decipher as to who has contributed this chapter. Since the name of persons contributing in different chapters are given in list of contents and here no name is mentioned against chapter X it could be the contribution of the Director of excavation of the

site themselves. The Directors of this excavation were Sri Hari Manjhi and Sri B. R. Mani. According to me chapter 10 could be authored by them jointly being the Co-Directors. It is my feeling. ..." [Pg. 11699-11700, Vol 62]

"In my opinion it should have been mentioned as to who authored chapter X of the ASI's report volume-I but if other names of contributors have been given and in this particular chapter names are not given then naturally it goes to the concerned Directors whose name are given in the beginning of the report, they are the leaders of the excavation team. When the names of the team leaders are given in the beginning of the reports and with reference to other chapters their contributors names have been specifically mentioned, in that case it will be presumed that chapter X has been contributed by the team leaders of the excavation. ... I treat Hari Manjhi and B. R. Mani as team leaders. B. R. Mani's name has also been mentioned as co-author in other chapters. ... In 'Contents' it is mentioned that B. R. Mani has singly contributed chapter 1 i.e. 'Introduction'. While he is co-contributor of chapter II, IV and V. The name of Hari Manjhi appears nowhere in the 'Contents' as contributor of any chapter." [Pg. 11704-05, Vol 63]

7. It is important to know which member of the ASI authored because it entails the entire analysis, and is not completely reasoned.
8. It is unsigned and it is unknown as to who has done the final analysis of the report and prepared the summary of results. The said summary by itself is therefore not reliable, however, the High Court has relied upon the Summary of Results.

14

ORDER

IN

O.O.S. NO.4 OF 1989

Sunni Central Board of Wakf Vs. Sri Gopal Singh Visharad

Connected with

O.O.S. No.1 of 1989,

O.O.S. No.3 of 1989,

And

O.O.S. No.5 of 1989

The basic issue in all the suits is as to whether there was a Hindu temple or any Hindu religious structure existed and the alleged Babri Masjid was constructed after demolishing such temple at the site in question.

Issue No.1 (b) in O.O.S. No. 4 of 1989 Sunni Central Board of Wakf Vs. Sri Gopal Singh Visharad reads as under:-

"Whether the building has been constructed on the site of an alleged Hindu Temple after demolishing the same as alleged by defendant No.13?"

Issue No. 14 in O.O.S. No. 5 of 1989 Bhagwan Sri Ram Virajman and others Vs. Rajendra Singh and others reads as under:-

"Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma Sthan Temple at its site?"

The Hon'ble President of India had referred the following question to the Supreme Court under Article 143 of the Constitution:-

"Whether a Hindu Temple or any Hindu religious structure existed prior to the construction of the Ram Janm Bhoomi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

The Archaeological Science can help to resolve the question. In the modern age the Archaeological Science has achieved the great accuracy and points out from the excavation the past history particularly in regard to the past existence of the construction. Sri D Mandal in his Book "AYODHYA ARCHAEOLOGY AFTER DEMOLITION" has opined as follows:-

"However, archaeology can answer with a considerable degree of certainty, many questions about various past activities of people, for which material evidence is available. It is for this reason that archaeological research continues and is of importance. It is believed that sufficient archaeological material is available regarding the temple-mosque issue, pre-empting the need for further excavations at Ayodhya." (page 16)

He further states that "Archaeology does not generally deal with super structures, as these seldom remain standing and awaiting excavation. All that usually remains of structures is their foundations. It may well be that demolition notwithstanding, the remains of the foundations of the walls of the mosque are still *in situ*." (page 52)

If there was any temple or religious constructions on the disputed site or if it ever existed, foundation can be traced by excavation.

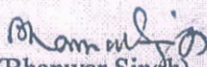
If it is ultimately decided to excavate the disputed land, in that event the excavation will be done by the Archaeological Survey of India under the supervision of five eminent Archaeologists (Excavators), even though retired, including two Muslims and the following procedure may be adopted.

- (1) The videography of excavation work be done and if any artifacts are found, their photographs (coloured as well as black and white and slides) may be taken. Such artifacts/materials, if found, may be kept under the custody of the State of U.P.
- (2) Complete documentation of sites, artifacts be done properly.
- (3) The debris of disputed structure as existing after its demolition shall be removed.
- (4) The excavation or removal of the debris may be done between 9.00 AM to 5.00 PM.
- (5) The Court may appoint observer for the excavation work.
- (6) At present at the disputed site the idol of "Shri Ramlala" has been placed and its devotees are worshiping, it may be placed at the Chabutra situate east to the site till the excavation work is complete.

Before the final orders are issued in above terms, all the parties are invited to submit in writing, within two weeks, their views/suggestions.

We make it clear that the above proposal in regard to excavation is tentative till final decision is taken on this issue.

In the meantime before excavation, the Archaeological Survey of India will survey the disputed site by Ground-Penetrating Radar or Geo-Radiology and obtain the report with the aid including financial assistance by the Central Government of India.


(Bhanwar Singh)


(S.R. Alam)


(Sudhir Narain)

1.8.2002

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16

O.O.S. No.4 of 1989

Sunni Central Board of Wakf Vs. Sri Gopal Singh Visharad

Connected with

O.O.S. No.1 of 1989,

O.O.S. No.3 of 1989,

And

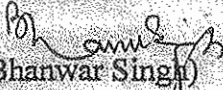
O.O.S. No.5 of 1989


We had passed an order on 12.4.2002 to visit the site in question at Ayodhya. On 4.5.2002 we visited the site along with the learned counsel for the parties and the parties in the suit. A list of their names was prepared in advance and a copy of such list is enclosed herewith. The Authorised person, the District Magistrate and other officials were also present.

We were shown the site and the officials had ear-marked the site by placing visible marks where the disputed structure was existing. They had shown the area which was alleged to have been levelled.

The District Magistrate had sent the first list of items/materials artefacts alleged to have been recovered and kept after the demolition of the disputed structure on 6.12.1992 mentioning 265 items kept in 'Ram Katha Kunj' and second list of 58 items kept in museum alleged to have been placed in museum after levelling of land in June-July, 1992. We were taken round to 'Ram Katha Kunj' and the Museum.

It was further pointed out to us by the officials that on the disputed site there were 140 visible items, the list of which was already submitted in the suit but now about 114 articles are visible, the details of which had not yet been furnished.


(Bhanwar Singh)


(S.R. Alam)


(Sudhir Narain)

1.8.2002

ORDER

IN

O.O.S. No.4 of 1989

Sunni Central Board of Waqfs & others

Versus

Gopal Singh Visharad (now deceased) & others

Hon'ble Sudhir Narain, J.Hon'ble S.R. Alam, J.Hon'ble Bhanwar Singh, J

One of the important issues in the suit is whether there was any temple/structure which was demolished and mosque was constructed on the disputed site. We took the view that archaeological evidence will be of importance to decide such an issue. We had made a suggestion in regard to excavation of the site in question by an order dated 1.8.2002 and invited the suggestions from the parties in this regard. It was further observed that till excavation order is passed the Archaeological Survey of India will get surveyed the disputed site by Ground Penetrating Radar and Geo-Radiology and will submit its report in this regard.

Certain objections were filed challenging our power to suo moto exercising such power. We rejected the objections on 23.10.2002 holding that the Court has power to suo moto summon any witness to record evidence, to summon any document from any person, to make local inspection or to appoint a commission for investigation if it thinks necessary or expedient in the interest of justice.

The Archaeological Survey of India placed the order for Ground Penetrating Radar survey to Tojo-Vikas International Pvt. Ltd. It has conducted GPR survey and has submitted report along with annexures on 17th February 2003. The conclusion in the report is as follows:- (Numbering is done by us)

1. In general terms, the main georadar features detected by the present survey are "anomaly alignments" across the main platform, north and south of the Sanctum Sanctorum extending to the Ram Chabutra area, the high amplitude "ringy sequence" towards the south, and the mound structures to the east.

2. In their cross-section appearance and their areal pattern, the "anomaly alignments" may correspond to a wall foundation of some sort. In the Rama Chabutra area, the crossing patterns of those alignments and the different stratigraphic units from where they ((emerge)) suggest that they belong to successive construction periods rather than being contemporary to one another. As mentioned earlier, similar indications of successive structures are shown in other areas of the site such as shown on the example radar cross section 2 (Annex D).
3. The ((ringy and high amplitude)) sequence in the southern portion of the Ram Chabutra area extends across the fences to the east to the main platform area to cover a rather large area. This sequence may be indicative of a flooring structure of some sort, possibly stone slabs if its origin is ancient.
4. A third type of buried structures covers the entire eastern boundary of the site. It consists of buried mound structures with some internal texture or structure indicative of collapsed material. Similar types of anomalies have been detected to the southwest area just before the terrain slopes down.
5. Many small discrete anomalies have been detected at various depths -- from 0.5 to 5.5 meters. Some of those anomalies appear to line up in some directions but could not be detected on some survey lines between them. As such they have been referred to "discontinuous alignment" on the geophysical interpretation map of Annex A. They may correspond to pillars alignment, broken up sections of wall foundations or fortuitous patterns of independent objects or natural features.
6. In the zones of reworked material or rubbles indicated on the map, little penetration was achieved as the signal was severely scattered in those units. It is possible that some of the trends or alignments stopping in those zones actually also extend further.
7. In the slope area to the west, which is undulating, filled with rubbles and steeply dipping, only small anomalies were detected at relatively shallow depths. They appear to line up somewhat as indicated on the map; however, the wider line spacing and the poor data quality, on account of ground conditions in this area,

due to bad coupling of the antenna with the ground, makes this interpretation difficult. This area as explained earlier is a debris zone where heterogeneous material was apparently dumped from the upper platform and the origin of those detected anomalies could also be debris.

8. We are also showing some indications on the map relative to the radar signal that are most probably related to geological factors such as dipping layers, recent fill sequence and zones of higher soil conductivity. They are part of the geophysical interpretation.

9. *In conclusion, the GPR survey reflects in general a variety of anomalies ranging from 0.5 to 5.5. meters in depth that could be associated with ancient and contemporaneous structures such as pillars, foundations walls slab flooring, extending over a large portion of the site. However, the exact nature of those anomalies has to be confirmed by systematic ground truthing, such as provided by archeological trenching.*

In para 9 of the report it is clearly stated that the exact nature of the structure, pillars, foundation walls slab flooring etc. can be confirmed by excavation.

Learned counsel for the parties have filed objections to the report submitted by Tojo-Vikas International (Pvt.) Limited. They have also submitted their objections to the excavation as it was proposed in our order dated 1.8.2002.

We have heard Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mushtaq Ahmad Siddiqui learned counsel appearing for plaintiffs and , Sri Vireshwar Dwivedi, Sri M.M. Pandey, Sri R.L. Varma, Ranjana Agnihotri for the defendants in O.O.S. No.4 of 1989, Sri Ved Prakash appearing for the plaintiffs in O.O.S. No.5 of 1989 and Sri P.L. Misra appearing for plaintiffs of O.O.S. No.1 of 1989. We have also heard Sri D.S. Randhava appearing for Union of India and Sri R.S. Tripathi learned Standing Counsel for the State of U.P.

We deal with their objections in seriatum:

1. The first objection is that the report submitted by Tojo-Vikas International (Pvt.) Limited cannot be read as substantive evidence in the suit unless it is duly proved in accordance with law. It is urged that the persons who have prepared the report must be examined in the Court and

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secondly, the data collected by Tojo-Vikas International (Pvt.) Limited should be made part of the record.

The report has been submitted on the basis of the results obtained by it by Ground Penetrating Radar system. The data is collected on the computer. It is reflection of Radar base and whenever any anomaly (in common parlance object) was found it has noted it. It is itself not conclusive and the report itself says that the measurements of Geo-Radar is based on the returning signals by a dielectric constant change. It is only guidance to an Archaeologist where to excavate. We are not recording any finding in regard to any foundation/construction on the basis of the report submitted by Tojo-Vikas International (Pvt.) Limited. The report itself states that the exact nature of anomalies/objects has to be confirmed by systematic truthing such as provided by archaeological trench.

2. The second objection of the learned counsel for the plaintiff is that the order of excavation will be in contravention of Section 7(2) of Acquisition of Certain Area at Ayodhya Act, 1993 which reads as under:-

"7(2) - In managing the property vested in the Central Government under Section 3, the Central Government or the authorized person shall ensure that the position existing before the commencement of the Act in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi - Babri Masjid, stood in village Kot Ram Chandra in Ayodhya, pargana Haveli Avadh, in Tahsil Faizabad Sadar, in the District of Faizabad of the State of Uttar Pradesh is maintained."

The aforesaid provision is a direction to the Central Government or the authorized person that it shall ensure that the position existing before the commencement of the Act in the area on which the structure, including the premises of inner and outer courtyards of such structure, commonly known as Ram Janma Bhumi-Babri Masjid is maintained. There is no direction for the Court restraining it in passing appropriate order in regard to trace out any evidence, which is underneath the land.

3. The third objection is that Hon'ble Supreme Court passed an order on 24th October 1994 in *Dr. M. Ismail Faruqui and others v. Union of India and others*, (1994) 6 SCC 360, wherein the Hon'ble Supreme

upon the decisions given in *R.M. Seshadri v. Vasantha Pai & others* – AIR 1969 SC 692, *Shaikh Mohamad Umarsaheb v. Kadalaskar Hasham Karimsab and others* – AIR 1970 SC 61, *Khaje Khanavar Khadarkhan Hussain Khan v. Siddavanahalli Nijalingappa and another* – AIR 1969 SC 1034, *Bishwanath Rai v. Sachhidanand Singh* – AIR 1971 SC 1949 and *Ram Chand and Sons Sugar Mills Pvt. Ltd. v. Kanhaya Lal Bhargava and others* – AIR 1966 SC 1899.

✓ Considering the entire facts and circumstances the Archaeological Survey of India is directed to get the disputed site excavated as under:-

“The area shown in the report of the Commissioner submitted in Suit No.2 of 1950 (O.O.S No.1 of 1989) covering an area of approximately 100 x 100 shown in the map plan no.1 referred to by letters A,B,C,D,E,F and thereafter northern portion up to the end of the raised platform and further to the west, south and east to the said site to the extent of 50 feet.

If it is necessary to excavate towards north or any area more than 50 feet to the disputed area, it can do so to find out the true position as regards to any foundation.

It is made clear that the Archaeologists (Excavators) shall not disturb any area where the idol of Shri Ram Lala is existing and approximately 10 feet around it and they shall not affect the worship of Shri Ram Lala and thus, status quo as regards His Puja and worshippers' right of Darshan shall be maintained.”

The excavation shall be done by Excavation Branch concerned specialized in excavation work within a period of one month from today. If they are engaged in other work it shall be suspended till the excavation in question is complete. If any additional staff is required the Archaeological Survey of India and Central Government shall provide it.

Tojo-Vikas International (Pvt.) Limited which has surveyed the site in question by GPR etc. shall assist the excavators by providing technical assistance at the time of excavation.

The work will commence within one week from today. The report will be submitted within one week from the date of completion of the excavation.

22 [7]

The Archaeological Survey of India shall intimate the date of the commencement of the work to the Officer on Special Duty, Ram Janma Bhumi-Babri Masjid. On receiving such information he shall intimate the date to the parties who can watch the excavation work.

Learned counsel for the parties can also appoint nominee including Archaeologist to watch the excavation work. It is made clear that only one nominee of each contesting party at one time shall be entitled to remain present."

Put up on 24th March 2003 by which date the Archaeological Survey of India shall intimate to the Court of the progress made by it in regard to excavation. ✓

Dt: 5.3.2003.

MHU.

Ram Janma

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In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.

O.O.S. No. 4 of 1989
(R.S. No. 12-61)

Sunni Central Board of Waqfs,
U.P. and others.

..... Plaintiffs.

Versus

Gopal Singh Visharad and others.

..... Defendants.

Hon'ble Sudhir Narain, J.
Hon'ble S. Rafat Alam, J.
Hon'ble Bhanwar Singh, J.

We have passed an order today that the contesting parties, their counsel or one nominee of each contesting party shall be entitled to watch excavation proceedings. In case a nominee is appointed by the party/counsel, he shall give name with photograph duly signed by the counsel to the Officer-on-Special Duty, Ram Jamma Bhumi-Babri Masjid, who shall countersign the said photograph and shall send it to the authorised person for his visit.

Sri D.S. Randhava, Senior counsel, and Sri R.P. Mehrotra, Counsel, representing Union of India and Sri R.S. Tripathi, learned Standing Counsel for the State of U.P. shall also be entitled to watch the excavation proceedings.

Dated: 5.3.2003
MHU.

By 