

IN THE SUPREME COURT OF INDIA
[CIVIL APPELLATE JURISDICTION]
CIVIL APPEAL NO. 2894 of 2011 §
CIVIL APPEAL NO. 7226 of 2011

A94

IN THE MATTER OF:

MOHAMMAD HASHIM (DEAD) THROUGH LR

...APPELLANT

VERSUS

MAHANT SURESH DAS AND ORS.

...RESPONDENTS

&

OTHER CONNECTED APPEALS

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By

MS MEENAKSHI ARORA, SENIOR ADVOCATE

ADVOCATE-ON-RECORD: M.R.SHAMSHAD

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- o None of the Plates of artefacts (human & animal figurines) referred to or otherwise mentioned in the Report are religious in nature, which can be specifically attributed to a Temple of Lord Ram. Hence, the plates in Vol 85 of the ASI Report do not lead to the inference that a temple existed on the disputed site at any point of time. The Chronology as per the ASI Report is as follows:

Period	Dynasty	Century	Years
I	NBPW	6 th -3 rd BC	500 BC – 299 BC
II	Sunga	2 nd -1 st BC	100 BC -99 BC
III	Kushan	1 st – 3 rd AD	1 – 299
IV	Gupta	4 th – 6 th AD	300 -599
V	Post Gupta-Rajput	7 th – 10 th AD	600 - 999
VI	Medieval-Sultanete	11 th -12 th AD	1000 -1199
VII	Medieval	12 th end -Start of 16 th AD	1180-1500
VIII	Mughal	No period assigned	
IX	Late and Post Mughal	No period assigned	

[Pgs. 52-64, Vol 83]

- o The following plates, from ASI Vol-III [Vol 85], were referred to show that they must have belonged to a temple of Lord Ram, at the site of the erstwhile mosque or areas adjacent to it. 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 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]

- The witness for the other side, **Mr. Jayanti Prasad Srivastava**, has stated in his Chief Examination that:

"Wall-16 was built around 1130 AD and pillared hall was erected in front of the shrines."

[Pg 11628, Vol 62]

- The witness for the other side, **Mr. Jayanti Prasad Srivastava**, has stated in his Cross Examination that:

"According to me the wall-16 could have been constructed sometime between 1194 AD to 1199 AD"

[Pg 11931-11932, Vol 63]

- The witness for the other side, **Mr. Nagaswami**, has stated in his Cross Examination that:

*"Ques. According to you wall-16 was raised in 1080 CE, to protect to a temple after its destruction in 1030 CE?
Ans. Yes"*

[Pg 2700, Vol 27]

- The witness for the other side has stated that wall-16 which has been attributed to the "massive structure" and the alleged temple which according to the plaintiff was demolished in 1528 AD. It is noteworthy to state that the ASI has returned no finding on the issue of demolition. Thus, any 'find' which is not specific to the issue which was referred to the ASI holds no evidentiary value.

Plate No., Vol 85	Pg. No., Vol 85	Description, as per the ASI Report, Vol 83-84	Remarks
59. Partly damaged east-facing brick built circular shrine, Tr. F8.	66	Found in Late level of Period V - Post-Gupta Rajput @ Pg.57, Vol. I ASI, Vol.83	1. The surviving wall as per ASI's drawings makes only a quarter of circle – such shapes are fairly popular in walls of Muslim construction as
60. Same, view from west.	67	[Note: The layers 5, 5A, 6 of trench E8-F8 belong to Period V and considering	

		<p>the finding of said shrine in the late level, it possibly belongs to layer 6.]</p>	<p>well. @ Para 6.1, Pg.1892, Vol.13</p> <p>2. Shrine could have been a <i>stupa</i> belonging to the 6th or 7th century AD (Refer Fig.24) @ Para 6.7, Pg.1894, Vol.13</p> <p>3. Nothing found in the structure in the way of image or sacred piece that can be called a "shrine" @ Para 6.2, Pg.1892 Vol.13</p> <p>4. The association between the shrine (eastern area) & the pavement (far north) has been used by the HC (para 3937, Pg. 2410 Vol II judgment) to date the shrine to 900-1030AD even though the find in Trench J3 (shrine) has no connection with the aforesaid pavement. If channel had been in use for draining water for a long time there should have been remains of water residuals – no such evidence found @ Para 6.10, Pg.1895, Vol 13</p> <p>5. "Experts who visited the site and measured the angle of slope of</p>
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			<p><i>the pranala found that the slope which was necessary for the water to pass out wasn't there." @ pg 7131, Vol 43.</i></p> <p>Thus, there was no basis to infer that it used for performing "Abhisheka".</p> <p>6. The HC has wrongly termed the <i>Pranala</i> as a 'Gargoyle', which has no basis in the ASI Report. @ Para 3937, Pg. 2410, Vol II, Impugned Judgment</p> <p>7. Fig 24 and Fig. 24A don't correspond to the actual find which is a quarter of a circle and there is no basis for the divinity attached to the said structure. @ Pg. 107-108, Vol 83</p> <p>8. It is erroneous to compare the structure with a certain temple structures and not with circular walls & buildings. @ Para 6.1, Pg.1891, Vol.13</p> <p>9. No object of <i>Hindu worship</i> found on this layer @ Para 6.1, Pg.1891 Vol.13</p>
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66. Working level of the Kushan Period, Tr. J3	73	Shows levels 6,7 & 8 of Trench J3	It is the case of the plaintiff that the alleged temple was constructed in the 12 th century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the Kushan Period (1 st to 3 rd century AD), the said finds have no bearing.
74. Terracotta core glazed ware.	78	Found in Period VII, VIII & IX @ Pg.174r.w.Pg.187-192, Vol.I ASI (Vol.83)	Attributed to Period VII, VIII & IX which belong to the Islamic period hence cannot be attributed to a temple. The Medieval Period extends from 12 th century to 16 th century, and the other two levels (Period VIII and Period IX) have not been assigned any period. Hence, Thermoluminescence dating would have given an accurate time period to the artefacts, which despite assurances was not done. This assumes importance considering that there was Islamic Rule during the aforesaid period.
75. Sandy core glazed ware.	78	Found in Period VII, VIII & IX @ Pg.174 r.w.Pg.192, Vol.I ASI (Vol.83)	
76. Terracotta core glazed ware sherds.	79	Found in Period VII, VIII & IX @ Pg.174 r.w.Pg.187-192, Vol.I ASI (Vol.83)	
77. Porcelain ware sherds.	79	Found in Period VII, VIII & IX @ Pg.175 r.w.Pg.192, Vol.I ASI (Vol.83)	
78. Celadon ware sherds.	80	Found in Period VII, VIII & IX @ Pg.174 r.w.Pg.192, Vol.I ASI (Vol.83)	
103. Fragments of a flower motifs, stucco	97	Found on surface @ Pg.249 (S.no.6), Vol.II ASI (Vol.84)	This find belongs to the mosque. Flower motifs are often used in Islamic structures and the same has been admitted by a witness of the other side, Mr. J. P. Srivastava, as quoted under: "However, I have noticed flowered designs in such Islamic buildings." @Pg 11678, Vol 62

			Thus, it can't be attributed to a temple.
104. Torso of a human figurine wearing <i>uttariya</i> , terracotta.	98	Found in layer 1 (late level) @ Pg.253 (S.no.16), Vol.II ASI (Vol.84)	The figurine has been (presumably) attributed to the Post Mughal Period, the period for which has not been assigned by the ASI. However, the erstwhile Mosque was already in existence and hence the find cannot be attributed to a temple of Lord Ram. In any case looking at the plate, it is impossible to ascribe whether it's a hindu/muslim figurine.
105. Ornamented female bust, terracotta.	98	Found in layer 4- Period II - Sunga @ Pg.255 (S.no.27), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 th century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the Sunga Period (2 nd -1 st century BC), the said find has no bearing.
106. A human leg, terracotta.	99	Found in layer 4 (Period III - Kushan Period) @ Pg.255 (S.no.28), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 th century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the Kushan Period (1 st to 3 rd century AD), the said finds have no bearing.
107. Leg portion resting on a pedestal, terracotta.	99	Found in layer 5 (Period III - Kushan Period) @ Pg.253 (S.no.20), Vol.II ASI (Vol.84)	
108. A male holding a perforated disc, terracotta.	100	Found in layer 4 (Period III - Kushan Period) @ Pg.259 (S.no.53), Vol.II ASI (Vol.84)	
109. A decorated human head, terracotta.	100	Found in layer 4 (Period III - Kushan Period) @ Pg.257 (S.no.37), Vol.II	

		ASI (Vol.84)	
110. Anthropomorphic figure, terracotta.	101	Found in layer 4 (Period VI – Medieval Sultanate) @ Pg.257 (S.no.38), Vol.II ASI (Vol.84)	The Sultanate period began in 1206 AD. Thus, the labelling of the period is therefore factually incorrect.
111. Standing female figure, head broken and missing, terracotta.	101	Found in layer 6 (Period V – Post Gupta Rajput @ [Pg.57, Vol.I ASI (Vol.83)] – Period I-NBPW Period @ Pg.253 (S.no.17), Vol.II ASI (Vol.84)	Different periods have been assigned to the same artefact by the different archaeologists of the ASI team. This goes to show that the Report is based on assumptions, presumptions and conjectures. Even otherwise, it is the case of the plaintiff that the alleged temple was constructed in the 12 th century (Medieval Period), thus the said find has no bearing.
112. A decorated human head, terracotta.	102	Found in Pit SB8 (Period IV – Gupta Period) @ Pg.256 (S.no.33), Vol.II ASI (Vol.84)	No find in the Pits has been explained in the Report. Hence, no inference can be drawn therefrom.
113. Anthropomorphic figure, terracotta.	102	Found in Pit SB8 (Period IV – Gupta Period) @ Pg.258 (S.no.45), Vol.II ASI (Vol.84)	
114. Moulded human head, terracotta.	103	Found in Pit SB8 (Period IV – Gupta Period) @ Pg.258 (S.no.46), Vol.II ASI (Vol.84)	
115. Female head, terracotta	103	Found in layer 14 (Period II – Sunga Period @Pg.52, Vol.I ASI [Vol.83]) – Period III - Kushan Period @ Pg.260 (S.no.45), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 th century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the Kushan or Sunga Period, the said find has no bearing. Further, different

			periods . have been assigned to the same artefact by the different archaeologists of the ASI team. This goes to show that the Report is based on assumptions, presumptions and conjectures.
116. Ornamented male bust with a typical headgear, terracotta.	104	Found in layer 16 (Period IV – Sunga Period @Pg.52, Vol.I ASI [Vol.83]) – Gupta Period @ Pg.260 (S.no.59), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 th century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the <i>Sunga/Gupta</i> Period, the said find has no bearing. Further, different periods have been assigned to the same artefact by the different archaeologists of the ASI team. This goes to show that the Report is based on assumptions, presumptions & conjectures.
117. An archaic human waist, terracotta.	104	Found in layer 6 – Period I - NBPW @ Pg.260 (S.no.58), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 th century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the <i>NBPW</i> Period, the said find has no bearing.
118. A primitive female figure, terracotta.	105	Found in Pit SB (Floor 1) Period VIII – Mughal Period @ Pg.254 (S.no.26), Vol.II ASI (Vol.84)	No find in the Pits has been explained in the Report. Hence no inference can be drawn therefrom.

119. Horse rider, terracotta.	106	Found below Floor 3 – No Period mentioned @ Pg.251 (S.no.7), Vol.II ASI (Vol.84)	The Report fails to provide vital information about the period to which the Floor mentioned herein belongs.
120. Smiling human head, terracotta.	106	Found in layer 7 (Period V –Post Gupta Period) @ Pg.258 (S.no.43), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 th century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the Post-Gupta Period, i.e. prior to the 10 th century AD. Thus, the said find has no bearing.
121. Human head with head gear, terracotta.	107	Found in layer 4 (Period VII – Medieval Period) @ Pg.251 (S.no.2), Vol.II ASI (Vol.84)	The Medieval Period extends from 12 th century to 16 th century, and the other two levels (Period VIII and Period IX) have not been assigned any period. Hence, Thermoluminescence dating would have given an accurate time period to the artefacts, which despite assurances was not done. This assumes importance considering that there was Islamic Rule during the aforesaid period.
122. Ornamented human torso, terracotta.	107	Found in layer 8 (Period V – Post Gupta Period) @ Pg.260 (S.no.56), Vol.II ASI (Vol.84)	Admitted that alleged temple not constructed in the <i>Post Gupta</i> period i.e. prior to the 10 th century AD. Thus finds of said have no bearing.
123. Female torso, terracotta.	108	Found in layer 7 (Period III or Period IV @Pg.51, Vol.I ASI [Vol.83]) – (It is the case of the plaintiff that the alleged temple was

		<p>Period I – NBPW Period @ Pg.261 (S.no.61), Vol.II ASI (Vol.84)</p>	<p>constructed in the 12th century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the <i>Kushan/Gupta/NBPW</i>, the said find has no bearing.</p> <p>Different periods have been assigned to the same artefact by the different archaeologists of the ASI team. This goes to show that the Report is based on assumptions, presumptions & conjectures.</p>
124. Decorated human waist, terracotta.	109	<p>Found in layer 20 (Pre-Maurya Period – i.e.NBPW Period) @ Pg.260 (S.no.60), Vol.II ASI (Vol.84)</p> <p>[Note: Mauryan period starts from 322-187BC]</p>	<p>Admitted that alleged temple not constructed in the <i>NBPW</i> period. Thus finds of said period have no bearing.</p>
127. Elephant, terracotta.	111	<p>Found in layer 3 (Period not mentioned) @ Pg.269 (S.no.66), Vol.II ASI (Vol.84)</p>	<p>The Report fails to provide vital information about the period to which the layer mentioned herein belongs.</p>
128. An animal figure, terracotta.	111	<p>Found in layer 2 (filling) (Late Level) @ Pg.270 (S.no.74), Vol.II ASI (Vol.84)</p>	<p>The figurine has been (presumably) attributed to the Post Mughal Period, the period for which has not been assigned by the ASI. However, the erstwhile Mosque was already in existence and hence the find cannot be attributed to a temple of Lord Ram. In any case looking at the plate, it is impossible to ascribe whether it's a</p>

			hindu/muslim figurine
129. Cobra hood, terracotta.	112	Found in layer 4 (Early Medieval Period) @ Pg.267 (S.no.54), Vol.II ASI (Vol.84)	The Sultanate period began in 1206 AD. The labelling of the period is therefore factually incorrect.
130. Bull head, terracotta.	112	Found in layer 13 (Period II – Sunga Period @ Pg.38, Vol.I ASI, Vol.83) – (Period III– Kushan Period) @ Pg.277 (S.no.119), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 th century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the <i>Kushan/Sunga Period</i> , the said finds have no bearing. Different periods have been assigned to the same artefact by the different archaeologists of the ASI team. This goes to show that the Report is based on assumptions, presumptions & conjectures.
131. Broken elephant, terracotta.	113	Found in layer 16 (Mauryan Period) @ Pg.278 (S.no.125), Vol.II ASI (Vol.84) [Note: Mauryan period starts from 322-187BC]	It is the case of the plaintiff that the alleged temple was constructed in the 12 th century (Medieval Period). Further, the ASI does not mention the Mauryan Period in Chapter 3: <i>Stratigraphy and Chronology</i> . The same may be assigned to the NPBW Period. Therefore, admittedly, the temple not having been constructed in the <i>NPBW Period</i> , the said finds have no bearing.
132. Elephant	114	Found in Floor 3 (Period	The Medieval Period

head, terracotta.		VII - Medieval Period) @ Pg.264 (S.no.23), Vol.II ASI (Vol.84)	extends from 12 th century to 16 th century. Hence, Thermoluminescence dating would have given an accurate time period to the artefacts, which despite assurances was not done. This assumes importance considering that there was Islamic Rule during the aforesaid period.
133. Bull figurine, terracotta.	114	Found in Pit SB Floor 1 (Period IX – Late & Post Mughal @ Pg.50, Vol.I ASI, Vol.83) – (Maybe assigned to Early Medieval Period) @ Pg.274 (S.no.101), Vol.II ASI (Vol.84)	No find in the Pits has been explained in the Report. Hence no inference can be drawn therefrom.
134. An animal figurine, terracotta	115	Found below Floor 3 (from Late level) @ Pg.263 (S.no.20), Vol.II ASI (Vol.84)	The figurine has been (presumably) attributed to the Post Mughal Period, the period for which has not been assigned by the ASI.
135. Elephant, terracotta.	115	Found in layer Western Section of K3-K4 baulk (from the Late level) @ Pg.277 (S.no.123), Vol.II ASI (Vol.84)	However, the erstwhile Mosque was already in existence and hence the find cannot be attributed to a temple of Lord Ram. In any case looking at the plate, it is impossible to ascribe whether it's a hindu/muslim figurine
136. Bird, terracotta.	116	Found in Pit 1 SB-1 (Maybe assigned to Early Historic period) @ Pg.272 (S.no.88), Vol.II ASI (Vol.84)	No find in the Pits has been explained in the Report. Hence no inference can be drawn therefrom.
137. Part of an inscription in Nagari script, stone.	116	Period -11 th century @ Pg.280-281 (Registration No.117), Vol.II ASI (Vol.84)	The observation made in the Report states that: "Since the inscription is of highly fragmentary nature, the object of the

			<p>record cannot be made out. Perhaps, it mentions the name of a person ending with Pala.”</p> <p>The aforementioned observation clearly goes to show that the inference drawn qua the inscription mentioned herein are based purely on conjectures and hence suffer from want of evidentiary value.</p> <p>The witness for the other side, Dr. R. Nagaswami, in his Cross Examination states as under:</p> <p>“However, I can disclose a fragmentary inscription found in trench J-3 and it is to the effect ‘NG PAL’.</p> <p>From this inscription, it is not decipherable as to what was the name of the king or dynasty of the constructor of the temple..”</p> <p>[Pg 2924, Vol 27]</p>
138. Round sealing bearing 'sidhe' in Asokan Brahmi characters, glass	117	Found in layer 12 (3 rd BC) [belongs to NBPW @ Pg.52, Vol.I ASI, Vol.83] @ Pg.284 (S.no.1), Vol.II ASI (Vol.84)	<p>It is the case of the plaintiff that the alleged temple was constructed in the 12th century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the NBPW Period, the said find has no bearing.</p>

Counsel for Appellants in CA 2894/2011 & other Connected Appeals