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### **Sri Rama Janma Bhumi Case in Supreme Court - Gist of Proceedings dated 27.09.2018**

Two opinions were delivered today. One by J. Bhushan for himself and for J. Mishra and the other by J. Nazeer.

Reading the majority judgment, J. Bhushan said that the the Focal Point is the Constitution Bench Judgment of Ismail Faruqui and while considering the same we have to appreciate the principles of interpretation of judgment.

We have to see the context in which the questionable observations were made. The expressions were only in respect of Land Acquisition

The observations about place of significance and mosque as not essential tot he practice of Islam, are to be read in the context in which it was argued by the petitioner therein that mosque cannot be acquired and therefore the observations in Para 65 to 82 were made.

The observations made in Para 65 to 82 are to be read in the above context only.

Coming to the observations made in Para 82 regarding mosque not essential to the practice of Islam, Court said that those observations are to be read in the context of later observations oft he same Para and has to be confined tot he question of acquisition.

The Court said that Constitution Bench rightly said that protection to the place is only if it has particular significance and if the extinction of that place affect the practice of that religion, the protection of Art. 25 is available.

The Court further said that expression particular signaficance lost ist significance after the Acquisition Act of 1993 and for deciding the Suits.

Concluding his Judgment, J. Bhushan said that questionable observations made in Ismail Faruqui are made in respect of Land Acqusition only and are not relevant for deciding the cases.

The matter is now listed for hearing from week commencing 29 October.

**27.09.2018 Judgment** [\[PDF\]](#)

**Sri Rama Janma Bhumi Case in Supreme Court - Gist of Proceedings****dated 23.03.2018**

Arguments were resumed by Dr. Rajiv Dhawan, Senior Advocate appearing for Sunni Board on the point that Judgment of Constitution Bench in Ismail Farooqi is required to be referred to a larger bench.

Referring to Para 74 to 81 of the Judgment he said that the effect of the finding is that it reduces the scope of Articles 25 and 26 of the Constitution where sufficient protection has been given for religious practices.

He said that the finding that the right empties out Art. 25 and 26 and the huge protection given to every religious place is taken away.

He added that this particular mosque (Babri Masjid) was built in 1528 and was rebuilt by the British in 1935 and therefore it cannot be said that this mosque cannot be protected.

He said that the judgment has influenced the impugned order in great detail.

While referring to Para 82, he argued that you can destroy a mosque but you can't rob its religious status. The destruction of mosque cannot result in extinction of mosque. Place of worship remains forever. Only exception is that of acquisition because power of eminent domain is there.

This court cannot say that a mosque that was built by you is not significant except mecca and madina is not right. He cited the story of Prophet carrying stones for building a mosque.

You cannot take a Gurudwara, mosque, church or temple.

He stressed his grievance on the terms 'comparative significance' as used in Ismail Faruqi and said that there cannot be any comparative significance of two religions. Mosque and Temple can't be compared and should not be compared. None of them can be placed above the other.

You say that we demolish therefore it lost its significance. Therefore, the whole case ultimately rests on: Do you go after 1992 or before 1992.

Referring to Ismail, he said that to say that mosque can be acquired and is subject to law of limitation has nothing to do with Art. 25. It only buffers the argument because of cooperative significance which in itself para 51 and now read into Para 77 and becomes gospel truth and if we see in the impugned judgment by High Court you will see what the impact of those judgments has made. How many times, it has been cited, what it has been cited for and at some stage the HC say that we cannot go outside the Ismail Faruqui.

Ismail Faruqui says that Temple, Church, Mosque are protected u/d Art. 25 but only if they have special significance.

While referring to Para 82, he said that the judges were aware that every word will impact the suit proceedings.

While referring to the findings that, the mosque is not an essential practice of Islam and Namaz can be offered anywhere even in open, he said we know what India does in open.

You cant just say that mosque does not have any unique position, it has. Every mosque is unique until acquisition by state in exercise of power of eminent domain.

Incrementally, the place of worship acquires the special status.

The Judgment of Ismail Faruqui cannot be treated as directive that a court can follow. It influenced the entire impugned judgment.

Thereafter, while referring to the words “Larger National Purpose” used in the Ismail Faruqui, he said whether Ram Janma Bhumi is the larger national purpose? Or whether Political agenda of a govt. is the larger national interest? Or what is stated in the white paper of BJP is the larger national interest?

He then proceeded to say when Ram was born? Some says lacs of years ago! Where he was born? Nobody knows! Some says some where in Ayodhya. Then they introduced Swayambhu. It takes us nowhere, the property with no idol. If we go in that direction then they may claim whole world.

The comparison here (in Ismail Faruqui) is in the context of nation importance.

Both in white paper and here there is a comparison in respect of national importance.

Your lordship predecessor did a great disservice to our casue when he said he will mediate. Whether he could or not is a question but journalists after journalists told that after that they were forced to report that it is the muslim who resisted the settlement in their own interest.

Ismail Faruqui introduces New concept within Art. 25. The effect is that to defend any mosque or any place, you have to show integrality, show significance and show that it is in the national interest otherwise, so long as it can be practiced effectively no protection is available.

This court has always protected the religious freedom.

Is it practical for you to practice your religion effectively elsewhere? What does it mean? I want to go to a mosque, its my mosque, my people built it, it was recognised by Mughals , it was recognized by the british, you said go and practice elsewhere, where shall I go? Build elsewhere and one person had the audacity to say that if you don't have the money we will pay the money. Who asked you?

Then he referred two other passages of Ismail Faruqui.

Para 49 The Judgment wrongly says that claim of muslim is limited to disputed site where mosque stood before demolition. He said this is incorrect, we claimed graveyards also and this also impacted the judgment. What is the property in dispute? The act may have localized the land but if the suit is revived then entire suit property is to be adjudicated upon.

We are left with an idea hanging in the air by this judgment which is not even claimed by the muslims.

Then referring to the observations that some Miscreants demolished the mosque he said they were not miscreants. There were two powerful rathyataras. Ministers and others were there. Leadership of BJP was there.

I ask myself, if we are to say that Hindus are not to blame and this was accidental and hindu case must be considered as if it was an accidental, it affects us.

Demolition was a deliberate attempt by prominent hindus

This was a strident, calculative and deliberate attempt to destroy the mosque and unless that is accepted we will never get a right prospective in this case.

My quarrel is not just Para 74 to 82 but also on the definition of what is the issue in the suit that interest of muslim is only where the mosque stood and then what is said in Para 51 Comparative significance.

I don't want anybody to bear the cost. I want to bear it on myself but that's not enough to decide the legal question. Your Lordship can't comment on that because criminal cases are alive therefore publicity to those people lordship don't want.

But I can place before your lordship if required, BJP White paper.

I receive messages, that I am speaking to God and God tells me you to go there and compromise. What do I do? Then he rings up my clerk and says "sahib ko kah do jaye aur suit compromise kar le"

This is the atmosphere in which the mosque was destroyed and we can't run away with it. Nor can we run away from what happened in 1949.

Thereafter reading out the passage from TMA PAI Judgment he said that I am trying to visualize in my mind what the interpretation in Ismail Faruqui would be if it is to correspond to Justice Kripal's idea of secularism.

If we introduce the concept of cooperative significance, will we build something big? Big piece of marble here and for them little stones, not of any significance, throw them away.

Will the map of Art. 25 has to be drawn and then say that there is no equality here and there is comparative significance and we will put only major hindu places and frankly there is no muslim place in India.

We have to interpret Art. 25 as if it was distributed on the map of India. Every mosque, church, temple, gurudwara until the govt in the national interest decides to acquire or until this court say we follow shahid ganj and therefore it can be taken away by limitation. Until

then there is no comparative significance of any place. All places are equal.

Then Dr. Dhawan proceeded to argue on Essential Practice Doctrine and referred 1954 SCR 1005, to say that an outside authority has no jurisdiction to interfere with religious practices, not even the Courts and therefore Your Lordship can't say that the Muslims can pray anywhere and your mosque has no significance. The right to administration of the religious practices cannot be taken away by any court of law.

Then Mahant Jagannath Ramanuj Das v. State of Orissa (1954) and Ratilal Panachand Gandhi v. State of Bombay (1954) were also referred.

Then he placed Places of Worship (Special Provisions) Act of 1991 and referred to Section 2, 3 and 5 thereof.

Section 5 of the Act, excluded the statute's applicability to the Ayodhya.

Before concluding for the day, he said that placing of Hindu idols in the disputed structure on December 22/23, 1949 was a gross violation of the principle of secularism, barbaric act and the incident of 1992 was again a barbaric act.

Dr. Dhawan is still on his legs and **the matter is now listed for further hearing on 6.4.2018 at 2 pm.**

### **Sri Rama Janma Bhumi Case in Supreme Court - Gist of Proceedings dated 14.03.2018**

Adv. Ejaz Maqbool filed status report indicating the volumes and books filed by both the parties. He requested that all the intervention applications be disposed of.

The Applications for intervention were called out one by one and Court heard advocates for each applicant.

The Court was of the view that

1. this is an appeal arising from suit and hence no application can be allowed
2. No documents from the third party can be accepted
3. This is not discretionary jurisdiction like writ court.



Finally court passed an order is that all intervention/impleadment applications are dismissed as they do not deserve any consideration.

Court further directed Registry not to accept any new intervention applications.

Subramaniam Swamy then showed his writ petition and orders passed therein. The Court has disposed of his application and restored his Writ Petition to be listed before appropriate Bench.

ASG Tushar Mehta then requested the Court to allow all applications for Substitution and other formal applications.

Court allowed the same and all the substitution and other applications are accordingly allowed by the Court.

ASG appearing for the State of UP also undertook to provide depositions of witnesses in word format in a pen drive in 2 weeks.

State of UP is also directed to provide translation of extracts of exhibited books, of required by the other side.

Thereafter the matter got started and J. Ashok Bhushan indicated that whether reference to Constitutional Bench is required or not in the present case needs to be decided at the outset.

Ejaz Magbool indicated they will take 1 week to prepare on that.

Parasaran ji for Hindus relief on some 1954 SC judgment and others to say that it is appropriate to decide the issue at the earliest.

J. Deepak Misra clearly indicated that we are not thinking of referring the case to larger bench but are considering the effect of Ismail Farooqi judgment on the present case. Only that part of case or substantive question of law will be referred to Constitution Bench But if Court feels that there is no reconsideration required of Farooqi's case then it may not refer to larger bench and will proceed with the matter.

Rajeev Dhavan took strong objection to the manner in which it deals with lawyers and that had forced him to leave the profession. He then requested for a patient hearing.

Thereafter Dr. Dhawan proceeded to argue on the question of referring the matter to Larger Bench.

He relied on the Ismail Farooqis case Paras 78-82 to argue that the finding regarding 'Mosque is not integral part of Islam' is bad.

He said that on 06.12.93 there was illegality of criminal trespass by placing the idol and then by demolition of the Babri Masjid. He said these incidents prejudiced his rights.

He argued that why hindus given right to pray and muslims' right to pray is not recognised.

He further said that J. Verma wrongly says that muslims can pray anywhere and the order granting Hindus, the right to pray is illegal.

He said finding in Farooqi will disturb the findings in the present case and therefore it should be referred to constitution bench.

He relied on Art 25 and that any narrow view of faith and religion cannot be taken. Every single mosque church and mandir is essential part of any religion.

At the end, Court recorded the contentions of Senior Advocates K. Parasaran, CS Vaidyanathan and Shyam Diwan appearing for Ram Lala that there is no need to refer the matter to larger bench and agreed that the issue of reference to larger bench should be decided at the threshold.

**Matter is part heard and adjourned and now listed on Friday 23 March 2018.**

### **Proceedings dated 8/2/2018**

At the outset Sr Adv C U Singh for Shyam Benegal n Ors prayed for allowing them to intervene in the matter to which Hon'ble Court declined, all requests for intervention shall be considered at the appropriate time.

Thereafter Mr. Tushar Mehta, Senior Advocate appearing for State of U P submitted a Status Report and informed the Court that in compliance of earlier orders all the depositions

(witness statement), Exhibits ASI Report and Pleadings have been filed. Other side agreed to our submission and there was no objection from the other side.

Mr. Ejaz Maqbool, Counsel for the Muslim side also presented before the court a status report similar to that of ours.

He also said that Some of the documents which were in Urdu could not be filed and he will file the same within 2 weeks.

He further said that there are some books like Ramayan, Gita, Hans Baker etc. exhibited by plaintiffs in Suit-5 have not been filed by them.

Senior Advocates K. Parasaran, C S Vaidyanathan, Shyam Divan and Vikramjit Banerjee representing the Ram Lala, the plaintiff of Suit-5 informed that the relevant portion of these books are already reproduced in the impugned order with translation thereof.

They assured the court that relevant pages of those books shall also be placed on record separately.

The Court after considering all the submissions directed that Muslim parties to file the translated copies of the Urdu documents within 2 weeks.

Mr. Rajeev Dhawan informed the court that they will open the arguments for Muslim parties. When the Senior Advocates requested him about the time frame, he angrily said he will take his own time and will argue the way he wanted and Court cannot compel him.

The Bench took serious objection upon the submission of Mr. Dhawan.

The matter has now been posted for hearing on 14.3.2018.