

**IN THE HON'BLE 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

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**ADVOCATE ON RECORD:**

**MR. M.R. SHAMSHAD**

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- I. As per agreed upon procedure by parties, the submissions of arguments were exchanged between the Plaintiff-Appellants of Suit 5 with the Plaintiff-Appellants of Suit 4 on 12.10.2019 with regard to the ASI Report, 2003.

II. **PRELIMINARY OBJECTIONS:**

1. **Demolition of a Temple/Pre-existing structure was not argued**

The demolition of a temple or any other structure was not argued before this Hon'ble Court at the time of arguments on the ASI Report, 2003 by the Plaintiff-Appellants of Suit 5.

2. **ASI Report is silent on demolition**

- i. The ASI Report is silent on demolition of any structure, let alone a Temple of Lord Ram.
- ii. The ASI Report does not mention any signs of demolition such as molten lead, burn marks, etc.

- iii. The task before the ASI was to report to the High Court whether a temple was demolished and the mosque constructed thereon. The ASI Report does not answer the first part of the query.

### III. REPLY ON MERITS

1. The finding of the ASI of a '*massive structure with 3 structural phases and 3 successive floors attached to them*', being expert opinion, was challenged before the High Court, primarily on the following grounds:
  - i. Not a single pillar was found during excavation.
  - ii. The ASI Report itself states that the alleged pillar bases were constructed across different time periods. Thus, admittedly, they could not have supported a '*Massive Structure*' at a single point in time.
  - iii. Some of the alleged pillar bases exist on different floors. These floors in Trench J3 (Floor 2 and 4) are about 5 meters apart in terms of depth.
  - iv. The alleged pillar bases vary in shape, size and alignment from Wall 16. Thus, these alleged pillar bases could not be load bearing. The variance in shape and size is admitted in para 2.13.
  - v. The ASI Report is contradictory as to exactly how many alleged pillar bases were found attached to the various floors.
  - vi. Wall 16 could have been an Idgah or a Qanati Mosque or a retaining wall or even the foundation of the Babri Mosque itself.
  - vii. Walls 18A, 18B, 18C were partially found. Small portions were excavated. They are drastically thinner than Wall 16 and were not structurally connected to Wall 16.
  - viii. Wall 16 was plastered on the inside, thus no question arises of Wall 18 A or Wall 18 C being structurally connected to it, as the plaster would be between the intersection of these walls. Load bearing or structurally connected walls do not just rest against each other.
2. The ASI Report does not describe the brick bat foundations, below calcrete blocks, as load bearing. Load being distributed over top of the

pillar bases by use of a bracket is sheer conjecture. The Report, does not suggest the use of such brackets. Such brackets were also not found during excavation.

3. The Plaintiff-Appellants of Suit 5, seemingly accept the finding of the ASI that no feature of habitation activity was found right from Gupta Period to Early Rajput Period, therefore their wider argument of worship at the site is contrary to the said finding of the ASI.
4. Wall 5 resting on Wall 16 is not disputed. The nature of Wall 16 is however disputed, as stated hereinabove.
5. The ASI Report does not attribute Wall 16 to an 'old temple' in the main text of the report. The report only finds a two examples wherein architectural members bearing engravings have been found. Wall 16 is stated to have used one such member from Wall 17. Wall 16 has been attributed to the '*Massive Structure below the Disputed Structure*' and the use of material from the earlier Wall 17 therein has not been explained in the Report. That being said, it is most likely that the constructors of the mosque used the remains lying around the site for the construction of portions that would be visible.
6. The *Makar Pranal* could not be a *pranal* as the said term implies a water chute. There is nothing to suggest that the *Makar Pranal* had such a water chute.
7. It is reiterated that Wall 17 is not attributed to the '*Massive Structure*'. Further, there is no evidence of comparable walls of similar width to Wall 16 to form an enclosure of the supposed temple. Thus, there is nothing to suggest that Wall 16 and the alleged pillar bases had a roof resting on them.
8. The objections with regard to the pillar bases have already been summarized hereinabove.
9. As submitted during the course of arguments, no *linga* was recovered from the circular shrine. It is too small to be a shrine where *jal abhishek* (Holy Bath of Deity/Idol/Linga) could have been offered, Lastly, two pillar bases were constructed on top of the Circular Shrine, thus it could not be a secondary shrine or a shrine at all. Further, the closest comparison of the shrine has been done to a Buddhist structure. Lastly,

a perusal of Plates 59-60 shows a possibility of manipulation of the shrine to carve out a water chute. No explanation is offered as to why a site supposedly related to a Lord Vishnu avatar would have a secondary shrine dedicated to Lord Shiv. No contemporaneous examples of such a practice and tradition have been stated by the ASI nor argued before this Hon'ble Court.

10. The architectural members sought to be relied upon to establish the evidence of a Hindu Structure existing before the construction of the Mosque were mostly recovered from the debris of the demolished mosque which was then stored off site. Thus, the provenance of such recoveries not being from stratified and excavated layers is highly doubtful.
11. The Vishnu-Hari inscription was not found during excavations but rather during demolition of the Babri Mosque in 1992. The said inscription is not related to the ASI Report in any manner.
12. The attribution of the allegedly *ghata* shaped pit to a *garuda stambh* is conjectural. The ASI report does not suggest such a nature of the said pit.
13. Terracota figurines, glazed ware, pottery, etc are common to both cultures, i.e. Hindu and Muslim. To attribute such findings to only one culture would be erroneous.
14. As submitted during arguments, the Summary of Results is not supported by the main text of the ASI Report. Given the inconsistencies in the Report itself and the errors in methodology pointed out of how the excavation was done and the findings analyzed, within the admitted constraints faced by the ASI, the report and more particularly, its Summary of Results cannot be relied upon.
15. A detailed reply on the Plates shown to the Court during arguments, by Sh. CS Vaidyanathan, Ld. Senior Advocate has been tendered as **Vol. A 94**.
16. Reply to Conclusion:
  - i. It is admitted that there could have been structures below the Babri Mosque. Such structures at best would have been in ruins and not noticeable to the naked eye in 1528.

- ii. There is no material to show the demolition of any structures. Neither in the ASI Report nor in terms of what has presented to this Hon'ble Court.
- iii. The Walls of the 18 series i.e. 18 A, B, C and D cannot be attributed to the same structure at Wall 16, given the difference in their width and material. Further, the existence of Wall 18B is doubtful.
- iv. The earliest time ascribed by the ASI to the site is NBPW Level to be of the period 6<sup>th</sup> century BC to 3<sup>rd</sup> Century BC [Pg. 52, Vol. 82]. The Report does not mention Floor 4 being from this Period. The first floor to find mention in the report is attributed to the 11<sup>th</sup> -12<sup>th</sup> Centuries i.e Period VI-Medieval-Sultanete [Pg. 57, Vol 83].
- v. The alleged pillar bases and their load bearing nature are not borne out from the Report.
- vi. The hypothesis of the massive structure being a public space is not supported in the Report by contemporaneous examples.
- vii. An Idgah would also be a public structure outside the **habitational** area of Ayodhya, as it existed then.
- viii. Not a single religious artefact was found by the ASI in the stratified layers of the excavation. The recoveries of terracotta and 2 members with foliage patterns cannot be attributed only to a Hindu culture at the site. Further, there is nothing on record to substantiate that the Circular Shrine was a shrine at all. The fact that two pillar bases were thereafter built on top of it, further refute this opinion.
- ix. The ASI does not attribute the *ghata* to be for the erection of a *Garud Dhvaj*. The recovery of the various architectural members have been detailed as either from the debris of the demolished mosque or of a nature not exclusive to the Hindu culture.
- x. The Plaintiff-Appellants of Suit 4 had no occasion to plead the existence of any structure below the Babri mosque, because the excavations took place much later after the plaint in the said suit was filed. Further, there was nothing in history or otherwise to suggest the existence of any other structure below the Babri Mosque until the filing of Suit 5, which popularized the notion that a temple had been demolished to construct the mosque.