

NOT THE AYODHYA JUDGMENT, BUT THE MINDSET OF CERTAIN PEOPLE REQUIRES A REVIEW

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On 2nd of December 2019, M. Syed Ashhad Rashidi, the legal heir of M. Siddiq, the original litigant of the Ayodhya land dispute, has filed a review petition challenging the correctness of the Supreme Court Judgment pronounced in the Ayodhya case on 14 grounds. The Petitioner has not sought a review of the entire judgment but only of those issues which have been decided against them. Interestingly, they are in parts happy with the certain findings but unhappy with the others. It clearly indicates who is more interested in keeping this issue alive, as there are several findings which are against the interest of other parties as well but even then they are more interested in giving quietus to the dispute.

It is very unfortunate that there are certain groups who are creating this situation in the country whereby the interpretation of this landmark judgment is being peddled in a very wrong manner. Certain interested groups are deliberately avoiding the findings and reasoning arrived upon by the Court which indicates in a very clear terms that the Muslim Parties have lost their case because of their failure to adduce evidence to substantiate their case. At the same time the case has been decided in favor of the Deity as per the well settled principle of appreciation of the evidence in civil cases like this, i.e. 'preponderance of probabilities'.

It is very apparent that the Petitioner seeks review of only adverse finding against them and a bare perusal of the Review Petition filed reflects that it nowhere satisfies the criteria fixed by the Hon'ble SC for reviewing its own judgment. However, on contrary it suggests that the groups which are behind this frivolous Review Petition requires a review of their mindset in a socio-political context and up-gradation of their knowledge in law with respect to the valid grounds for filing such review Petition. It is not the judgment which requires a review but the vicious and toxic mindset of certain people, who have misguided innocent Muslim community of the country for decades during the case including the Marxist historians and now after the settlement of this dispute, again crying that the Judgment is wrong. It is against the secularism. It is a kind of mandamus to destroy our 'Babari Mosque'. The Court has rewarded the illegal acts. The Court was wrong in extending what was earlier a prescriptive right only into a

possessory title over the land to the Hindus. The Court has relied upon the travelers account and inadmissible evidences adduced by the Hindu parties while giving land to the Deity. The Court is wrong by not holding the structure as a waqf property and so on.... But hang on; these were the issues which have been already decided by the Court, Right? Then is it possible through a review petition to reexamine the same issue on the basis of same set of evidence?

Let us in brief examine the grounds for review of a SC Judgment. Where the two interpretations/findings is possible and the Court has taken one, on the basis of evidences on record, then it can never be a ground for seeking a review by asking the Court to adopt the second one, which it has refused after thorough deliberation, upon the same issue in same set of facts. Adopting that would amount to violation of not only a principle of the Res-Judicate, but also damage the sanctity of the earlier Court proceedings. Such review is only permissible in rare of the rarest cases where while arriving to its conclusion Court has committed a human error. The scope of review is hence very narrow. It can never reopen the entire issue on the basis of same set of old evidences which has already dealt upon and the decision has been taken thereof or unless the judgment has been passed without appreciating any law or misreading of the law and which should be clear on the face of record like typo mistakes.

Review, i.e., a judicial re-examination stems from Article 137 of the Constitution of India and Order XLVII of the Supreme Court Rules, 2013. A review under the said statute lies only when:

i. There is a discovery of afresh and important matter of evidence, whereby the claimant is bound to prove that, after exercising due diligence, it was not within their knowledge or was not in a position to be produced at the time when the order or judgment was passed. (Aribam's Case, AIR 1979 SC 1047)

ii. There is an error or mistake apparent on the face of the record and not from an erroneous decision or any other ground. An error apparent on the face of record is one that strikes at the mere looking of the record and does not need detailed scrutiny. It must be self-evident and should not have to be established. (Meera Bhanja's Case, (1995) 1 SCC 170)

iii. Any other sufficient reason, after proving such sufficient reasoning.

Considering these limited scopes of review and while going through the grounds averred in the Review Petition, one can easily understand that the future of such Petition is bleak. The Review Petition has been filed in a manner to reopen the entire issue which is against the settled law hence it is bound to fail.

The Court has given a unanimous judgment on the findings that –

1. The alternate plea of adverse possession was not established by the Sunni Central Waqf Board, as it failed to meet the requirements of adverse possession [Paragraph 788(XVIII)(iii)]

2. The Archeological Survey of India's report has suggested that the foundation of the mosque is based on the walls of a large pre-existing structure, which was not of an Islamic origin and was suggestive of a Hindu religious origin comparable to temple excavations. [Paragraph 788]

3. The evidence in respect of the possessory claim of the Hindus to the composite whole of the disputed property stood on a better footing than evidences so adduced by the Muslims. [Paragraph 800]

4. The Hindus have been in unimpeded and exclusive possession of the property's outer courtyard, where they continued worship over the periods of time, and other grounds.

The Court was therefore of a view that the Hindus have rightfully established a clear case over the possessory title of the disputed property by virtue of the long, unimpeded and continued worship at the Ramchabutra and other such objects of religious significance. Whereas, the Court has also observed that the Muslim Parties have failed to produce any document or evidence (be it admissible or inadmissible) prior to 1856 with respect to their right over the land. They have even failed to prove their exclusive adverse possession after 1856. What remains after that to claim over the property on behalf of Muslim Parties? In short, they have failed to prove their case and cannot take advantage of weak evidence of other Parties.

Illegal acts can only be punished through criminal courts; it has no bearing at all on a civil case while deciding the title of a land. A Court while adjudicating a civil dispute cannot decide upon criminality of certain acts committed in past and punish the offenders by way of not awarding title of the land to its legitimate owner. A Court cannot exercise its jurisdiction simultaneously both in the capacity of criminal and civil court.

The judgment has been a result of the higher principle being that of equality before the law and has not sided with majoritarianism, as criticised by critics. The Court has considered law and reason over faith, has explained each point of law before making any observation and has only then come to the conclusion of allocating the disputed land to the Hindus. Considering the strong reasons given by the Court in each issue upon scrutiny of evidences, it is imperative to state that the ends of law and justice have been met with, and that, there is no scope of injustice within the judgment, leave alone the presence of an unjust finding on the face of the judgment. Amongst other reasoning as to why the said review petition shall not stand, few of the most apparent reasons fall to be –

a. The judgment does not include a cloud of uncertainty as it has provided sufficient reasoning with proofs and evidences (oral and documentary) of all its findings. The Court has also acted in the interest of all the parties and has therefore given directions of alternative allotment of land to Muslims, an interest to

the Nirmohi Akhara in the Trust so made to look after the building of the Ram Mandir and other such directions.

b. The party seeking the review, as also held by the Hon'ble Court, has not been successful in establishing their case, and that, the evidences as provided by the Hindus has been held to stand on a better footing than that of the evidences provided by the Muslims. In the Review Petition also they have not adduced any such permissible fresh evidence.

c. The review petition so filed raises questions over the powers of the Supreme Court to pass orders by which the Babri Masjid be demolished. The interpretations so made by the claimant are not as to the allocation of land to the other party, but emphasizes on the fact that the judgment of the Court virtually amounts to a mandamus to destroy the Babri Masjid. Hence, such controversial interpretations cannot pave way towards the admission of the petition, as it still does not clear the grounds of review under the required Article and Order.

d. The Petition further questioned whether the Court has ignored the wrongs committed by the Hindu parties in 1934, 1949 and 1992, as to which the Court has already given orders stating the same were wrongful and illegal and has duly acknowledged the acts before passing the said judgment.

e. Similarly the Petition sought clarification over the evidentiary value of the ASI reports and the gazettes, which have also been duly answered in the judgment itself, and stands no reasonable ground for the said review.

It is for these reasons that the filing of review petition is not the best of the decisions and with all reasonable factors does not stand valid in the eyes of law.

Before filing such mischievous Review in such a sensitive matter, the Petitioner has to think that the land has not been given to any person or individual, it has been given to the Deity. Deity has never committed any illegal act upon anybody. In fact illegality has been committed upon the Deity for centuries by the invaders. Then what is this argument that Court has awarded certain illegal acts. Is it even sane to say that giving land to the Deity is an award to the criminals? This Petition is clearly filed with intent to disrupt the harmony and peace in our society. The Socio-Political message which this Petition tries to convey is dangerous and the Society needs to remain wary of such groups.

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