

IN THE COURT OF DISTRICT JUDGE, VARANASI
O.S. No.-18/2022

Rakhi Singh and others

Versus

State of Uttar Pradesh & ors.

Disposal of Application Paper No. 327C, 330C and objections paper no. 332 C, 334 C and 336C.

I have heard the learned counsel for applicants / plaintiff no. 2 to 5 regarding application 327C and 330C. I have also heard the learned counsel for plaintiff no.-1 regarding objections paper no.332C. I have also heard the learned counsel for opposite parties defedant no.-4 regarding their objections paper no.-334C and 336C.

Application 327C has been filed on behalf of applicants Laxmi Devi, Sita Sahu, Manju Vyas and Rekha Pathak with the prayer that Director of Archaeological Survey of India be directed to undertake scientific investigation / survey / excavation at the property in question i.e. the settlement plot no.9130 excluding the areas sealed under the Orders of the Hon'ble Supreme Court of India vide order dated 17.05.2022, 20.05.2022, 11.11.2022 in SLP (C) No. 9388 / 2022 titled as Committee of Management Anjuman Intezamia Masajid, Varanasi versus Rakhi Singh and others. Besides the above mentioned reliefs, certain other reliefs have also been claimed by the applicants.

In the application 327C, it has been prayed by the plaintiffs no. 2 to 4 / applicants that a glorious, magnificent temple of Lord Shiva was existing at the site in question which was destroyed by muslim invaders. Aurangzeb, one of the mughal Emperors issued Farman in 1669 A.D. to demolish the Temple of Adivisheshwar at Varanasi and in pursuance of the said command issued by the ruler, his subordinates demolshed the aforesaid Temple and informed him regarding compliance of his order. Adjacent to the old demolished Temple, a new Temple Kashi Vishwanath was later on built in 1777-1780 by Rani Ahilyabai Holkar, the Queen of Indore. The followers of Sanatan Dharma i.e. the devotees of Lord Shiva are fighting for restoration of Temple of Lord Adivisheshwar right from 1670 till date. But unfortunately they have not been provided justice. In these circumstances, the plaintiffs have invoked plenary civil jurisdiction of this Hon'ble Court so that the truth may proved in Court of law and injustice be undone through the process of law. The building in question, standing in dilapidated condition, clearly speaks about its ancient past and after visualizing the buidling structure, one can easily say that the building is the remains of old Hindu Temple and that the present structure cannot be deemed to be Mosque by any stretch of imagination. In pursuance of order passed by Civil Judge in C.S. No.-693 of 2021, the Advocate Commissioners made a survey of the Temple on 06, 07, 14, 15 and 16 May, 2022. On 16.05.2022, during survey, a Shivling was found on the first floor of the building in question and such portion has been sealed in pursuance of order dated 16.05.2022 passed by Civil Judge and further orders dated 17.05.2022, 20.05.2022 and 11.11.2022 passed by Hon'ble Supreme Court in SLP(C) No. 9388 of 2022.

During survey made by Advocate Commissioner in the month of June, 2022, the following facts came to light :-

1) The alleged Gyanwapi mosque is standing on the pillars of an ancient Hindu Temple



- 2) The Sanskrit Shlokas are engraved on the pillars of Tehkhana (cellar) in the Southern and Northern sides of the building in question
- 3) The Swastik signs are existing at various places of the building in question
- 4) The places of keeping sub-shrines of Hindu deities are existing in the building in question
- 5) The vigrah of Maa Sringer Gauri is existing on the western side of the building in question
- 6) From certain pillars, located at the northern side of the building in question inside the cellar, bells were found which are part of Hindu Temple Architecture
- 7) The pillars existing at the cellar on the northern side of the building in question have been painted repeatedly to hide the original character of the pillar
- 8) The pillars at the first floor of the building have been painted repeatedly to hide the original character of the pre-existing construction/material
- 9) Beneath the central dome of the alleged mosque, a hollow sound is coming and it is believed that same is covered by certain artificial construction which can only be ascertained by ASI through modern scientific techniques
- 10) There are certain artificial walls existing in the southern side of the building in question i.e. the cellar of Vyasji, the cellar on the northern side and other parts of the building in question. A detailed expert scientific investigation is required to understand the nature of construction.

The wall on the western side of the building bears the load of construction of the super structure i.e., the three domes. There are numerous artefacts and signs of Hindu temple existing on the western wall of the building in question. Archaeological Survey of India is the premier institution of the country and it is equipped with necessary infrastructure and instruments for conducting GPR survey, excavation or dating and other scientific methods to find out the age and nature of construction. The ASI can also take help of various other experts in the field i.e. IIT Roorkee, IIT Kanpur, BSIP (Lucknow), Inter-University Accelerator Centre (IUAC).

The applicants have also stated that in **Ayodhya case**, a three judges bench of the Hon'ble Allahabad High Court by passing an order dated 01.08.2002 appointed ASI to find out as to whether 'there was a temple or religious construction in the disputed site or if it ever existed, foundation can be traced by excavation'. Further in **Mohd. Siddique vs Suresh Das 2020 (1) SCC 1**, the Hon'ble Supreme Court has emphasized the working, power and the jurisdiction of ASI in the matter of making of investigation and exploring the possibilities regarding the antiquities which may be found in an area. Actual facts existed within building cannot be proved by oral evidence and the nature of constructions, the age of structure, certain objects hidden behind the artificial walls and beneath the structure can be proved before the court only on the basis of expert opinion which may be given by A.S.I. in this case.

The applicants have further stated that it is the case of the plaintiffs that the disputed structure is standing on the foundation of ancient Hindu Temple. It is also the case of the plaintiffs that Aurangzeb while demolishing the Hindu Temple existing at the site in question did not raise any new construction. The muslims started using the ruins of the Hindu Temple by converting the same and constructed a super-structure over a Hindu Temple. Therefore, in view of the facts mentioned above, as well as the averments made in the plaint, it is necessary, in the interest of justice that the Hon'ble Court, by virtue of Section 45 of the Indian Evidence Act, direct the ASI to conduct a survey and submit a report with regard to the crucial question involved in this suit.

Applicants have prayed that Hon'ble Court may be pleased to direct the Director of the ASI :-



(a) to undertake the scientific investigation/survey/excavation at the property in question i.e. at Settlement Plot No. 9130 in the case excluding the areas sealed by the Hon'ble Supreme Court vide order dated 17.05.2022, 20.05.2022 as well as vide order dated 11.11.2022 in SLP(C) No.9388/2022 titled as Committee of Management Anjuman Intejamia Masajid Varanasi vs. Rakhi Singh & Ors.;

(b) to conduct a detailed scientific investigation by using GPR Survey, Excavation, Dating method and other modern techniques of the present structure to find out as to whether same has been constructed over a pre-existing structure of Hindu temple;

(c) to conduct scientific investigation in the light of the averment made in this application after associating the Plaintiffs, Defendants and their respective counsels and submit report to this Hon'ble Court within the stipulated time as provided by the Hon'ble Court and also to photograph and video-graph the entire survey proceedings;

(d) to investigate the age and nature of construction of the western wall of the building in question through scientific method(s);

(e) to conduct Ground Penetrating Radar (GPR) survey just below the 3 domes of the building in question and conduct excavation, if required;

(f) to conduct Ground Penetrating Radar (GPR) survey beneath the western wall of the building and conduct excavation, if required;

(g) to conduct Ground Penetrating Radar (GPR) survey beneath the ground of all the cellars and conduct excavation, if required;

(h) to prepare a list of all the artefacts which are found in the building specifying their contents and carry out scientific investigation and undertake dating exercise to find out the age and nature of such artefacts;

(i) to conduct dating exercise of the pillars and plinth of the building to find out the age and the nature of construction;

(j) to conduct GPR survey, excavation wherever required, dating exercise and other scientific methods for determining the age and nature of construction existing at the site in question;

(k) to investigate the artefacts and other objects of historical and religious importance existing in different parts of the building and also beneath the structure which may be found during such exercise;

(l) Pass such other order as the Hon'ble Court may deem fit and proper in the interest of justice.

Application 327C is supported by Affidavit 328C and certain photographs as Annexure A(1).

Application paper no. 330C has been filed by applicants / plaintiffs no.-2 to 5 with the prayer that this application is being filed in continuation of Application paper no.-327C filed on 16.05.2023 u/s 75(e) and Order 26 Rule 10A of Code of Civil Procedure, 1908 to clarify that the plaintiffs have prayed for making survey by ASI within the property in question at settlement plot no.-9130 which is encircled by barricading. The disputed property i.e., Gyanvapi Complex is situated at Settlement Plot No. 9130 and the entire area of the said building was barricaded in the year 1993-94. The claim of the plaintiffs / Applicants is that there are a number of artefacts, symbols of Hindu Temple and the original Jyotirlinga lies within the said area, and therefore, the true facts can come only after a scientific investigation is carried out by ASI. In view of the facts mentioned above, it is necessary that the Application is filed for ASI survey be taken to have been filed for conducting survey within the Barricaded area (also known as alleged Gyanvapi Mosque) and necessary directions be issued to ASI.

It has been prayed that ASI be directed to carry out necessary survey in terms of paper no.327C filed u/s 75(e) and Order 26 Rule 10A of Code of Civil Procedure, 1908 within barricaded area at settlement plot no. 9130 also known as alleged Gyanvapi Mosque and the Court may pass such other order as it may deem fit.

The learned counsel for defendant no.-4 has filed objections paper no.-334C. In the objection, it has been stated by defendant no.-4 that no Temple was ever demolished in the year 1669 in compliance of Farman of Emperor Aurangzeb. There was no concept of two Kashi Vishwanath Temples in Varanasi. The disputed structure situated at the disputed land is Alamgiri / Gyanwapi Mosque which has been in existence since thousands of years. The structure was a Mosque in the past and even today it is a Mosque. The muslims offer namaz in

the said structure without any obstruction. It has been admitted by defendant no.-4 that in Suit No.-693 of 2021 Smt. Rakhi Singh and ors. versus State of U.P., Civil Judge (S.D.), Varanasi arbitrarily passed an order of spot inspection by Advocate Commissioner. The spot inspection took place but no Shivling was found during the proceedings. The structure found is a sprinkler (fawara). It has also been stated by defendant no.-4 that in application paper no.-327C in para 7 some items have been mentioned (from serial no. 1 to 10) which are allegedly found during the proceedings undertaken by Commissioner. However, the Commissioners report has not been disposed of till today. No commission can be issued to collect evidence. Therefore, A.S.I. cannot be directed to undertake survey. The plaintiffs should stand on their own legs. In fact, in the garb of application paper no.-327C, the plaintiffs no.2 to 4 want to collect evidence whereas law does not permit it. The ASI expert report mentioned by plaintiffs no.2 to 4 in their application paper no.327C is not relevant at this stage because the Order of Hon'ble Allahabad High Court dated 12.05.2023 has been stayed by Hon'ble Supreme Court of India vide Order dated 19.05.2023. The present case cannot be equated with **Ayodhya Case** because in this suit issues could not be framed till today and no oral evidence has been adduced by any party. The judgment delivered by Hon'ble Supreme Court of India in **Ayodhya Case** is relevant only in the facts of that case. It is not relevant in this case. The structures mentioned in para 13 of application 327C are based on the imagination of the plaintiffs which is devoid of any reality. Alamgiri Mosque / Gyanwapi Mosque was never in the possession any other institution or person. It has always been in the possession of muslims. The application 327C is not maintainable as it is against law and A.S.I. cannot be directed to collect evidence and submit report. Mosque Alamgiri / Gyanwapi has not been constructed on the foundation of any Hindu Temple. Section 45 of the Indian Evidence Act is not relevant as far as application 327C is concerned. Regarding disputed property settlement plot no.9130, plot no.9131 and plot no.9132, a suit no.610 of 1991 is pending in the Court of Civil Judge (S.D.) / F.T.C., Varanasi. In that case, an Order was passed on 08-04-2021 and A.S.I. was directed to hold survey and submit report. Against the said Order, Writ No.3562 of 2021 was filed Under Article 227 of the Constitution **Uttar Pradesh Sunni Central Waqf Board versus Ancient Idol**. Writ No.3844 of 2022 **Anjuman Intezamia Masajid Banaras versus Ancient Idol and ors.** was also filed which is pending in Hon'ble Allahabad High Court. Order has been reserved in the petitions. In these circumstances, there is no question of holding survey by A.S.I. of the same property. In suit no.-693 of 2021 Civil Judge (S.D.), Varanasi passed an Order for spot inspection by Advocate Commissioner and for submission of report. In compliance of that Order, Advocate Commissioner was appointed and spot inspection was held on 06.05.2022, 07.05.2022, 14.05.2022, 15.05.2022 and 16.05.2022. Detailed report has been submitted by the Advocate Commissioner in the case and the report has yet to be disposed of. During the pendency of one report, regarding spot inspection, second Spot Inspection cannot be carried out by another agency about the same facts. The suit has been filed for declaration of right of the plaintiffs to worship Maa Sringar Gauri, Lord Ganesh, Lord Hanuman and visible and invisible Gods and Goddesses. Therefore, there is no need to hold survey of plot no.9130 or Alamgiri Mosque / Gyanwapi Mosque situated on that plot. If application 327C is allowed and A.S.I. is permitted to hold excavation then the Mosque Alamgiri / Gyanwapi may collapse and valuable evidence may be destroyed. During proceedings in Suit No.-693 of 2021 (new number-18 of 2022) in the "Vajukhana", a sprinkler (fawara) was found which is being termed as a Shivling by the plaintiffs. Application for holding survey by carbon dating of the alleged Shivling was turned down by this Court. Thereafter, Hon'ble Allahabad High Court passed Order for holding survey by A.S.I. on 12.05.2023 but that order was stayed by Hon'ble Supreme Court vide Order dated 19.05.2023. Therefore, survey by A.S.I. of the alleged Shivling has been stayed. It has been prayed that the application 327C may be dismissed. The objections paper no.334C is supported by affidavit 335C.

Against the application 330C, objections 336C has been filed by defendant no.4. In the objections, it has been mentioned by defendant no.4 that in application paper no.330C, it has been prayed that the area which has been barricaded and which is part of plot no.9130 may be surveyed by A.S.I. Defendant no.-4 strongly objected to it. The part of plot no.9130 which has been barricaded cannot be surveyed because Mosque Alamgiri / Gyanwapi is situated on it. The "Hauz" is also situated in that area and the so called structure found during

commission has to be protected in compliance of Order of Hon'ble Supreme Court of India. Application 330C and application 46C are contradictory. Through application 330C, it has been prayed that survey be held by A.S.I. of Gyanwapi Mosque which is under the control and management of defendant no.4. In Civil Suit no.610 of 1991, C.J. (S.D.) / F.T.C., Varanasi passed an Order dated 08-04-2023 for holding survey of plot no.9130, 9131 and 9132 by A.S.I. which has been challenged in Hon'ble Allahabad High Court. Order is reserved. In these circumstances, regarding same subject-matter two different survey cannot be held. Therefore, application 330C may be rejected.

Plaintiff no.1 has filed reply paper no.332C. It has been stated by plaintiff no.1 that application paper no.327C deserves to be allowed. The relief, sought in the said application will assist the Court in proper adjudication of the said suit. The relief sought in the said application will not cause any harm to either party but will help in disposal of the aforesaid suit. If any expenses are required to meet the relief sought in the application 327C, it will be readily borne by plaintiff no.1 along-with other plaintiffs. The relief sought in application 327C is an exigency for the disposal of the said suit and its failure may act as lacuna/ambiguity in appropriate adjudication of the said suit. The ASI may be summoned to apprise with all possible techniques to be incorporated for appropriate scientific investigation at plot settlement no.9130. Transparency in investigation must be assured towards parties to the suit to avoid possible allegation of any sort. Investigation of entire settlement plot no.9130 may be initiated by A.S.I. and may be completed at priority in the interest of justice.

I have heard the learned counsel for plaintiff no.2 to 5, learned counsel for plaintiff no.1, learned counsel for defendant no.4, the learned counsel for State of Uttar Pradesh and Union of India and perused the record.

In **Section 75 clause (e)**, it has been provided that subject to such conditions and limitations as may be prescribed, the court may issue a commission to hold a scientific, technical or expert investigation.

In **Order 26 Rule 10A**, the provision for Commission for scientific investigation have been given which is as follows :-

Commission for scientific investigation

(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 interest 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 the 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.

From the perusal of the application 327C and 330C, it is clear that the relief in the application has been sought to prove the facts mentioned in the plaint by scientific methods before Court so that it can come to a logical conclusion on the basis of material collected and report submitted by a fact finding expert agency. There is no doubt that ASI is a premier institution of the country and it is well equipped with necessary infrastructure and instruments for conducting GPR survey and other scientific methods to find out the age and nature of construction.

It is pertinent to mention here that Advocate Commissioner was appointed to hold spot inspection of the disputed property in suit no. 693/2021, old number of this suit, but that spot inspection was entirely different from the survey sought in application 327C by the plaintiffs no.2 to 5. Therefore, this objection does not hold much water that when already Advocate Commissioner has conducted spot inspection then there is no need to hold survey of the disputed property by ASI.

In my view, if ASI will be directed to hold survey and scientific investigation at the property in question and submit report then it will help in just and proper disposal of the case and true facts will come before this Court. I am also of the view that objections, filed by defendant no.4 are unfounded and without any substance.

It is also pertinent to note here that Hon'ble Supreme Court of India has not stayed the proceedings of this case vide Order dated 19-05-2023. It is also necessary to make it clear that the ambit of Order passed by Hon'ble Allahabad High Court dated 12-05-2023 is different from



the relief sought in application 327C. Therefore, if any Order is passed on application 327C then it will not be covered by the Order of Hon'ble Allahabad High Court dated 12-05-2023 or Order of Hon'ble Supreme Court of India dated 19-05-2023.

The learned counsel for defendant no. 4 has cited **Sri Kant v. Mool Chand and others**, 2019 (60) AWC 5427 in which it was held by Hon'ble Allahabad High Court that *local inspection or commission by Court is made only in those cases where with evidence led by parties, court is not able to arrive at a just conclusion either way or Court feels that there is some ambiguity in the evidence which can be clarified by making local inspection or Commission. Local inspection or Commission cannot be claimed as of right by any party.*

In my view, the law laid down in the above mentioned ruling is not applicable here because scientific investigation by ASI seems to be necessary in this case so that true facts relating to this case can come before the Court and this Court can arrive at just and reasonable conclusion.

In this reference it is pertinent to cite **In re P. Moosa Kutty**, AIR 1953 Madras 717. It has been laid down :-

" 4. The object of this local investigation is not so much to collect evidence which can be taken by Court but to obtain evidence which from its very peculiar nature can only be had on the spot : *Amulyakumar v. Anandacharan*, AIR 1933 Cal 475 (A). The Court has a discretion to order local investigation or not. It is not bound to order it in all cases; *Ram Bricch v. Muhammad Sahib*, AIR 1933 Pat 542 (B). In any event, an application under this Rule must be made before the case is closed. The form prescribed for commission for local investigation is set out in form No.9 in Appendix H, Civil P.C."

In **K. Raghunath Rao v. Smt. Tumula Jailaxmi**, AIR 1988 Orissa 30 it has been held that :-

" 9. The aforesaid passage makes it clear that local investigation by a Commissioner can be made in exercise of the power under 0.26, R.9, C.P.C. where visit to the spot is necessary. That would be proper. be a local investigation requisite or When the report would be necessary to appreciate the evidence on record, a commission can be issued in proper case. Therefore, normally writ is to be issued to a Commissioner for local investigation to appreciate the evidence already recorded. There may be departures from the normal rule for issue of commission also. For illustration: Where evidence is necessary to know the depth of water in a particular season a Commissioner can be deputed even though evidence has not been recorded. Where it is to be found as to on which plot the disputed land lies, a writ can be issued to any person to relay the same even though no evidence is required if the Court finds that the parties themselves cannot produce evidence to that effect. Since issue a writ to a person for local investigation would depend upon the facts and circumstances of each case; no hard and fast rule can be laid down. This much can be said that the basic pre-requisite for issue of such a writ is the satisfaction of the Court that a local investigation is requisite or proper. This satisfaction is to be judicial satisfaction based on reason."

In view of the above discussion, I am of the view that application 327C and 330C are liable to be allowed.

ORDER

Application 327C and 330C are allowed.

(a) The Director of ASI is directed to undertake the scientific investigation/survey/excavation at the property in question i.e. at Settlement Plot No. 9130 in the case excluding the areas sealed by the Hon'ble Supreme Court vide order dated 17.05.2022, 20.05.2022 as well as vide order dated 11.11.2022 in SLP(C) No.9388/2022 titled as Committee of Management Anjuman Intejamia Masjid Varanasi vs. Rakhi Singh & Ors.;

(b) The Director of ASI is also directed to conduct a detailed scientific investigation by using GPR Survey, Excavation, Dating method and other modern techniques of the present structure to find out as to whether same has been constructed over a pre-existing structure of Hindu temple;

(c) The Director of ASI is also directed to conduct scientific investigation in the light of the averment made in this application after associating the Plaintiffs, Defendants and their

respective counsels and submit report to this Hon'ble Court upto 04-08-2023 and also to photograph and video-graph the entire survey proceedings;

(d) The Director of ASI is also directed to investigate the age and nature of construction of the western wall of the building in question through scientific method(s);

(e) The Director of ASI is also directed to conduct Ground Penetrating Radar (GPR) survey just below the 3 domes of the building in question and conduct excavation, if required;

(f) The Director of ASI is also directed to conduct Ground Penetrating Radar (GPR) survey beneath the western wall of the building and conduct excavation, if required;

(g) The Director of ASI is also directed to conduct Ground Penetrating Radar (GPR) survey beneath the ground of all the cellars and conduct excavation, if required;

(h) The Director of ASI is also directed to prepare a list of all the artefacts which are found in the building specifying their contents and carry out scientific investigation and undertake dating exercise to find out the age and nature of such artefacts;

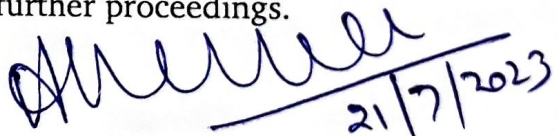
(i) The Director of ASI is also directed to conduct dating exercise of the pillars and plinth of the building to find out the age and the nature of construction;

(j) The Director of ASI is also directed to conduct GPR survey, excavation wherever required, dating exercise and other scientific methods for determining the age and nature of construction existing at the site in question;

(k) The Director of ASI is also directed to investigate the artefacts and other objects of historical and religious importance existing in different parts of the building and also beneath the structure which may be found during such exercise;

The Director of ASI is also directed to ensure that there should be no damage to the structure standing on the disputed land and it remains intact and unharmed. Report will be submitted up to 04-08-2023. Put up on 04-08-2023 for further proceedings.

Date : 21-07-2023


21/7/2023
(Dr. Ajaya Krishna Vishvesha)
District Judge
Varanasi
J.O. Code-UP5329