

Court No. - 1**AFR****Case :-** CIVIL REVISION No. - 114 of 2022**Revisionist :-** Smt. Laxmi Devi And 3 Otrs.**Opposite Party :-** State Of U.P Thru Principal Sec.(Civil Sec.) Lko. Nd 5 Otrs.**Counsel for Revisionist :-** Prabhash Pandey,Vishnu Shankar Jain**Counsel for Opposite Party :-** C.S.C.,Amitabh Trivedi,Fatima Anjum,Manoj Kumar Singh,Saurabh Tiwari,Syed Ahmed,Vineett Sankalp,Zaheer**Hon'ble Arvind Kumar Mishra-I,J.**

1. Pursuant to the order of this Court dated 04.11.2022, Director General, Archaeological Survey of India, New Delhi was directed for expressing opinion on the point whether scientific investigation of the 'structure' found at the site - subject matter of original suit no.18 of 2022, can be done through the method of carbon dating, ground penetrating radar (GPR), excavation and other scientific methods to be adopted to determine its age, nature and other relevant information without causing damage to it?
2. In that regard, the report has been submitted by the learned Additional Solicitor General of India – Sri Shashi Prakash Singh assisted by learned counsel Sri Manoj Kumar Singh.
3. Noticeable that the aforesaid report was produced in a sealed envelope by the Additional Solicitor General of India for perusal of the Court on 11.05.2023 whereupon the sealed envelope was opened in Court and copy of the report was sought to be made available to the counsel for the revisionists as well as the contesting respondents whereupon the copy was supplied to them so that the parties may come to know about the substance and contents of the report submitted by the Archaeological Survey of India, Sarnath Circle, Sarnath, Varanasi. At this juncture this was considered appropriate to give at least one day time to both the sides to peruse the copy of the report and to state their respective stand so

that the matter may be finally considered for disposal and the proceeding of this case was adjourned for the next following day i.e. 12.05.2023.

4. This Court carefully perused the original report which has been submitted to this Court by the covering letter of the Superintending Archaeologist, ASI, Sarnath Circle, Sarnath, Varanasi, dated 17.04.2023, thus communicating to this Court about the report which runs in as many as 52 pages and the learned Additional Solicitor General of India explained the various contents and aspects of this report - as submitted.

5. The learned Additional Solicitor General described the report by summing up that the opinion of the Archaeological Survey of India is based upon views/opinions of various renowned IITs (Indian Institutes of Technology) located in various regions of India, also about the scientific analysis of various methods and approach likely to be adopted for carrying out survey of the structure in question on the site.

6. Heard Sri Hari Shanker Jain, learned Senior Advocate, through virtual-mode, assisted by Sri Vishnu Shanker Jain, Sri Prabhash Pandey, Sri Pradeep Kumar Sharma, learned Counsel for the revisionists through hybrid mode, Sri Shashi Prakash Singh, Additional Solicitor General of India, assisted by Sri Manoj Kumar Singh, Advocate appearing for Archaeological Survey of India, Sri Mahesh Chandra Chaturvedi, learned Additional Advocate General assisted by Sri Bipin Bihari Pandey, learned Chief Standing Counsel, Sri Ramanjay Singh, learned Additional Chief Standing Counsel, Sri Ankit Gaur, Sri Shravan Kumar Dubey, Sri Gyanendra Singh, Sri Hare Ram Tripathi, learned Standing Counsel for the respondent nos. 1,2 and 3. Sri Syed Farman Ahmad Naqvi, learned Senior Advocate assisted by Sri Syed Ahmed Faizan, learned counsel for the

respondent no.4, Sri. Vineet Sankalp, learned counsel for the respondent No.5. No one appears on behalf of the respondent no.6 in spite of repeated calls, also perused the record as available.

7. By way of the instant revision, challenge has been made to the impugned order dated 14.10.2022 passed by the trial Judge / District Judge, Varanasi, in Original Suit No.18 of 2022 Rakhi Singh Vs. State of U.P. and others, whereby the application numbered 250 C moved by the plaintiff-revisionist and objection 255 C and 262 C were considered and the application aforesaid was dismissed by observation that the prayer made for scientific investigation of the structure (in the shape of Shivlingam) cannot be ordered as that would be in violation of the order dated 17.05.2022 passed by the Hon'ble Apex Court directing the site / Shivlingum to be preserved and protected. The trial court also observed that in view of above, there is no need for calling any report from the Archaeological Survey of India.

8. Learned counsel for the revisionists has vociferously claimed that the entire report on the point in issue for scientific investigation of the site by the Archaeological Survey of India when taken into consideration would reflect connotation, expressed and implied, that scientific survey of the site / Shivlingam can be managed and done without causing harm to the site in question. In support of his claim, learned counsel has engaged attention of this Court to the various pages of the aforesaid report to be specific page nos.1, 6, 8, 17, 18, 19, 21 and claimed that opinion / report submitted by the Archaeological Survey of India comes out with all the options available for conducting scientific survey of the site with possible outcome of the scientific investigation and it elaborates those methods by adopting which some data regarding age of the site / carbon dating of the site can be done without causing damage to the site and he proceeded to conclude that opinion

submitted by the scientists from the various IITs is based upon scientific analysis of the 'modus operandi' to be applied in this case. Learned counsel also suggested that those methods by adopting which site might be damaged may be discarded and the one which helps in carrying out scientific investigation / survey of the site without damaging it should be adhered to and given green signal by this Court so that actual age of the Shivlingam / site may be ascertained.

9. At the very outset, learned Senior Counsel appearing for the respondent no.4 has raised preliminary objection regarding the proceeding of this Court in view of the order dated 17.05.2022 passed by the Hon'ble Apex Court. Learned Senior Counsel has read out the directions of the Hon'ble Apex Court that the structure in issue is required to be protected/preserved, therefore, it cannot be disturbed and any order passed for carrying out survey or scientific investigation of the site would be violative of the aforesaid order.

10. Learned counsel for the revisionists intervened and in reply to the aforesaid contention, submitted that insofar as the order dated 17.05.2022 passed by Hon'ble Apex Court is concerned that would not deter this Court from considering the aspect of the scientific investigation to be done in the manner that it is done without causing damage to the site in question and the site remains protected and preserved.

11. In support of his submission, Sri Vishnu Shanker Jain, learned counsel for the revisionists engaged attention of this Court to the very order dated 20.05.2022 passed by the Hon'ble Apex Court and read out the same in its entirety and claimed that in the order itself, the Hon'ble Apex Court has directed the trial Judge / District Judge, Varanasi to proceed with the trial touching upon ancillary matter. It

is noticeable that during course of proceeding of this suit in question, application 250 C was moved (by the plaintiff-revisionist) calling for carrying out scientific investigation of the site which was considered more on technical grounds than on merits and perfunctorily rejected the application under garb of the aforesaid order dated 17.05.2022 that the site / Shivlingam has been directed to be protected and preserved, therefore, the trial Judge was of the opinion that there is no need for calling any report on the point under consideration from the the Archaeological Survey of India for determining the age, nature and structure of the Shivlingam. He repeated his claim that conduction of the scientific investigation for determination of the age of the site in question would not in all probability damage and destroy the site / Shivlingam and would not change its nature as existing on date.

12. At this stage, Mr. Syed Farman Ahmad Naqvi, learned Senior Counsel for the respondent no.4 was posed specific query as to whether the report of the Archaeological Survey of India as submitted by the learned Additional Solicitor General of India, inescapably connotes to the import that order for any scientific investigation of the site / Shivlingam if made, would have the effect of destroying the site itself then learned Senior Counsel tried to hammer on certain points by reading out contents of page no.4 of the aforesaid report. However, he was intercepted by the learned counsel for the revisionists by clarifying the factual situation by reading out the contents of page nos.6 and 8 of the aforesaid report, which gesture was ostensibly not opposed by the learned Senior Counsel for the respondent no.4. It may be observed that the learned Senior Counsel for the respondent no.4 drew blank on the point of specific query by this Court that any sort of scientific investigation will in all probability cause damage to the structure.

13. As the Court proceeded further and asked the learned

Additional Solicitor General of India, Sri Shashi Prakash Singh assisted by Sri Manoj Kumar Singh to express his views about the express and implied connotations emerging from the aforesaid report by the Archaeological Survey of India whereupon he elaborated various details of the report and brought to the notice of this Court that the ground penetrating radar technique / method will be helpful towards identifying the remains of the ancient structures buried if any at the site and he proceeded to explain that as per advice and various opinions subsurface stratigraphic section would be ideal to study the different culture level at the site. He claimed that IIT Kanpur has specific suggestion on the point in that regard. After lot of discussion on the various methods suggested in the report of the Archaeological Survey of India, the learned Additional Solicitor General suggested that scientific investigation of the site can be ably done without causing harm to the Shivlingam / site. He was innocuous on point while claiming that a cumulative reading of the report submitted by the Archaeological Survey of India does not make it a point that any scientific investigation of the Shivlingam / site, if carried out, would damage it.

14. Learned Additional Advocate General, Sri Mahesh Chandra Chaturvedi, appearing for the State also dittoed the line of argument and suggestion advanced by the Additional Solicitor General of India and claimed that there is nothing in the entire report which may cause damage to the Shivlingam / site if scientific investigation of the site is directed to be done. Therefore, to claim that the nature of the property of the site / Shivlingam would not be protected / preserved in case of scientific investigation is baseless argument without any rationale.

15. In the wake of the above discussed rival contentions and the fact position in the light of the report of the Archaeological Survey of India as submitted by the Additional Solicitor General of India,

the solitary issue that crops up for consideration of this Court pertains to fact whether scientific investigation of the site / Shivlingam, without harming and damaging the site / Shivlingam, can be directed or not?

16. While proceeding in the matter and viewing the things from that angle, the overall impression that trickles out from the careful perusal of the report of the Archaeological Survey of India indicates, to all intents and purposes, that scientific investigation of the site can be suitably carried out without causing harm to the site / Shivlingam in issue as such it can be concluded that the Shivlingam / site would remain preserved and protected even after the scientific investigation for determining the age, nature and status of the site / Shivlingam is done. The various reports of the scientific institutions do indicate to the same purport that scientific investigation can be carried out without causing harm to the site / Shivlingam. Since the entire report submitted by the Archaeological Survey of India has been made part of the record of this case, there is no need of describing the various extracts of these reports / opinion contained in the report itself.

17. In view of above discussion, natural conclusion emerges that scientific investigation of the Shivlingam / site, under able guidance of the Archaeological Survey of India assisted by the experts, scientists, archaeologist, can be done conveniently subject to the rider that the site / Shivlingam in question shall not be damaged and it shall be preserved and protected in its present shape.

18. At this juncture, proper scrutiny of the impugned order dated 14.10.2022 passed by the District Judge, Varanasi need be done both on legal as well as factual aspects.

19. Bare perusal of the order impugned dated 14.10.2022 passed by the District Judge, Varanasi reveals that an application

numbered 250 C was moved by the plaintiff-revisionists under Order 26 Rule 10 A read with 151 Civil Procedure Code, 1908 was moved with the prayer that the nature, age and status of the Shivlingam discovered on the site on 16.05.2022 in the survey done by Advocate Commissioner (of the site) be directed to be scientifically investigated by the Archaeological Survey of India by resorting to scientific techniques and technique for carbon dating. The contents of the order impugned proceeds further with the elaboration of the background of the original suit no.18 of 2022 and takes note of fact that some structure in the shape of Shivlingam was found by the Advocate Commissioner while survey of the site was made and a detailed discussion regarding nature and age of the substance of the Shivlingam was exhaustively taken into consideration by the trial Judge. Apart from that, objection 255 C filed by the defendant side was also taken into consideration and contents thereof discussed. After discussing factual aspect of the case, the trial Judge was of the view that the Hon'ble Apex Court vide its order dated 17.05.2022 has directed that the Shivlingam that was found on the spot in the survey commission should be protected and preserved and in case any direction for using carbon dating technique or ground penetrating radar is made there is possibility of causing harm to the Shivlingam itself and that would be in derogation of the order dated 17.05.2022 passed by the Hon'ble Apex Court. Apart from that, it would adversely affect religious feeling of the masses at large. Therefore, the prayer made in the aforesaid application by the plaintiff- revisionist was disallowed. Consequently the application numbered 250 C was rejected.

20. Now insofar as the above observation of the District Judge, Varanasi in regard to direction being issued for carrying out scientific investigation is concerned, it is admitted fact that before

passing the order (14.10.2022), due diligence was not exercised by the District Judge, Varanasi for the specific reason that the finding reached by the District Judge, Varanasi regarding damage being caused to the structure in issue is assumptive and presumptive and the same is not based upon any relevant material on record as such not supported by record. If the trial Judge had any apprehension of damage being caused to the site in case scientific investigation of the site is directed in that event it was obligatory on his part to have sought expert opinion of the persons well versed in carrying out such type of enterprises like the present one. The learned trial Judge, without collecting specific data / material from the able agency jumped upon the conclusion that scientific investigation of the site / Shivlingam if directed to be done will in all probability result in destruction of the site / Shivlingam itself.

21. This Court has no hesitation in observing that the report forwarded by the Superintending Archaeologist, ASI Sarnath Circle, Sarnath, Varanasi, would make it feasible and convenient that scientific investigation can be made to the extent and purport without causing harm to the site / Shivlingam in issue. That way, the natural premise that would follow, would proceed on theme that the actual site of the Shivlingam would remain preserved and protected. It being a factual reality, the technical and scientific report of the Archaeological Survey of India has opened ways for carrying out scientific investigation of the site / Shivlingam without causing any damage to the structure in question.

22. It being civil revision against the order impugned dated 14.10.2022 passed by the District Judge, Varanasi, merits of the original suit is not to be touched by this Court.

23. For the reasons aforesaid, the order impugned dated 14.10.2022 passed by the District Judge, Varanasi is found to be

without merit, for the reason that the finding to the import that any scientific investigation would have impact of causing harm to the structure is a finding not supported by the relevant material on record.

24. It is trite law that any finding recorded by a court of law must be supported by relevant material on record, whereas, any finding recorded by a court of law on the strength of reasoning alone minus relevant material on record would be on the face arbitrary and erroneous (finding). Therefore, the aforesaid finding of the District Judge, Varanasi, recorded vide order dated 14.10.2022 being erroneous cannot be sustained.

25. Consequently the order impugned dated 14.10.2022 passed by the District Judge, Varanasi, in Original Suit No.18 of 2022 Rakhi Singh Vs. State of U.P. and others is hereby set aside.

26. Therefore, the application numbered 250 C moved by the plaintiff-revisionist before the trial Judge is allowed to the effect and import that scientific investigation of the site / Shivlingam shall be carried out without causing damage to the site / Shivlingam and it shall be preserved in its present form. All objections moved against the aforesaid application 250 C is hereby disallowed.

27. It is directed that the trial Judge / District Judge, Varanasi will proceed further with the case and scientific investigation of the site / Shivlingam shall be directed to be done under aegis and guidance of the Archaeological Survey of India to the extent and import as observed hereinabove in this order and the entire exercise shall be done under direction and supervision of the trial court and all consequential necessary directions shall be passed / issued in that regard by it.

28. In order to facilitate further course of action by the trial court of Varanasi pertaining to original suit no.18 of 2022 Rakhi Singh Vs.

State of U.P. and others, learned Additional Solicitor General of India is directed to issue suitable directions to the concerned authority of the Archaeological Survey of India to appear before the trial Judge / District Judge, Varanasi on 22.05.2023, and the authority so present would after seeking suitable direction from the court of the District Judge, Varanasi, will render assistance to the trial Judge and will do the needful for carrying out the scientific investigation of the structure in the light of the observations made in this order. Both the parties present before this Court have also been apprised of this specific date and all have agreed to abide by it. Therefore, the parties are required to appear before the trial court on 22.05.2023.

29. In order to ensure proper scientific investigation as directed, let a copy of the entire report of the Archaeological Survey of India be transmitted forthwith to the trial Judge / District Judge, Varanasi. It is made clear that this report of the Archaeological Survey of India which runs in as many as 52 pages forwarded by Superintending Archaeologist, ASI Sarnath Circle Sarnath, Varanasi, would form part/record of the suit.

30. This revision is allowed in terms aforesaid.

31. Before parting with the judgment, this Court records high appreciation for the valuable assistance extended by the Additional Solicitor General of India, Sri Shashi Prakash Singh, assisted by Sri Manoj Kumar Singh appearing for ASI who took pains in elaborating the various contents of the report of the Archaeological Survey of India, thus assisting the Court to a great extent in disposal of this case. Likewise, this Court accords appreciation for the services rendered by the learned Additional Advocate General, Sri Mahesh Chandra Chaturvedi – State of U.P.- and learned Chief Standing Counsel – Sri Bipin Bihari Pandey – in disposal of this case. Learned Senior Counsel for the respondent no.4 Mr. Syed Farman Ahmad

Naqvi and his assisting counsel also deserve appreciation for rendering useful help to this Court in disposal of this case.

32. Let a copy of this order be transmitted to the trial Judge/District Judge, Varanasi, forthwith for ensuring compliance as above.

33. Costs easy.

Order Date :- 12.5.2023

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