

Supreme Court on 9th May 2011 granted stay on Ayodhya verdict passed by Allahabad High Court terming it as surprising and strange. Many persons related to Ayodhya dispute had expressed their happiness over this 'stay' granted by the Hon'ble Supreme Court because many of such people wish to keep the issue related to Ayodhya burning for their political gains.

The Apex Court's stay on the execution of the Allahabad High Court's order is definitely hopeful which will lead to a more meaningful judgment but the basis of 'stay' which gives more emphasis on the division of Land is misleading and not in accordance with the Law or not in accordance with the progressive, open minded jurisprudence for which the Hon'ble Supreme Court has been advocating for through various of its own previous pronouncements.

Allahabad High Court's decision about ordering the three-way division of disputed site in Ayodhya has given birth to various issues. It was pronounced by the Court that the land be partitioned between three parties to the suit i.e. Ram lalla, the Sunni Wakf Board and the Nirmohi Aakhada. The said trifurcation has been called as "something strange" by the Supreme Court while ordering stay on the same. The words in which the Supreme Court delivered this order runs as "the fundamental nature of the decree about partition of land was not sought by any party. The High Court has gone on a very new path. This is something surprising; something very strange has been done by the High Court on its own, when no party had sought such relief."

How much land has been given to whom and what can be the basis of such allotment of land of the disputed site can be questions of arguments and the stay granted by the Hon'ble Supreme Court will give some good answers to the same. But the only Legal aspect of disagreement with the Supreme Court for me is that the High Court has not gone on a very new path, and hence the decision was not surprising or strange. In fact this path is schemed and very well designed in Section 151 of CPC way back in 1908; the section says "**Saving inherent power of Court**"- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court. With due respect to the Supreme Court of India, I must say and mention that the Hon'ble Supreme Court seems to have overlooked the provision mentioned in Section 151 of the Civil Procedure Code. Section 151 of the Civil Procedure Code is about saving of inherent powers of Court. This section gives wide range of powers to courts to deal with the subject-matter before any Court and to use its own creativity in passing any lawful judgment. From the Lowest Court to the Supreme Court any lawyer generally mentions last prayer in any suit, case or an application that "any other order which deems just and proper may kindly be passed in the interest of justice". In Ayodhya Dispute Case also, on various occasions all the parties to the suit have mentioned this prayer in their applications in prayer clause. This last part of the prayer which is generally a neglected line is an important issue of the due process of law and using rationales to decide the case. So it becomes topic of less importance whether any parties to the suit had ever demanded for division of disputed land or whether the Court can pass any such order of division of land even though there is no prayer for the same. Babri Masjid - Ram Janama Bhumi dispute is a deliberate attempt to put a clear divide into main religions being practiced in India. Religious fundamentalists from both the sides have nurtured this dispute from time to time since 60 years. On this ground, the Allahabad High Court's verdict cannot be labeled as surprising and strange. I honestly beg to differ from the opinion passed by the Supreme Court and

the message circulated by the media on the basis of this Judgment because it has taken us aback on the very technical, mechanical and procedural aspects of law.

These inherent Powers of Courts given to it by Law are very important if we as citizens of democratic nation and wish to see proactive role are being played by the Courts in India. Limiting that scope by a restricted thought process will not be exhibiting finer perspective of law. As jurist Mr. Soli Sorabjee assured saying that it is just an order, and not final judgment, work has to begin now, the citizens in India are hopeful to get a good progressive judgment by the Supreme Court.

The Allahabad HC went by faith, which has not been proved, and in the process, it ignored the Law. The VHP and BJP had a very joyous reaction after the Allahabad HC recognized that the disputed site was Lord Rama's birth place. That was defiantly very surprising and strange. But unfortunately the Supreme Court has emphasized more on the division of disputed land and the order passed by the Allahabad HC without any specific prayer for the same.

Title suit should not be converted into partition suit is the generally accepted principle of Law. But I think that the 'rarest of rare case' principle shall be used in civil disputes like Ayodhya Case. If the Courts in India are having fundamental and natural rights of using its inherent powers in passing some orders as may be necessary to meet the ends of justice or to prevent abuse of process of law, then Allahabad High Court had used these rights while passing the verdict of division of disputed land.

The important thing we shall take into deliberation that repeating the question will not give any different answer because the Supreme Court also has to decide the issues in the Ayodhya dispute on the basis of same available documentation on record. But some really broader view and clarification is expected to come from the Supreme Court by using its authority and power mentioned in Article 142 of the Constitution of India which says "the Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it". If the Supreme Court can pass such order in the interest of justice then why courts or for that matter any other courts are not allowed to use the inherent powers mentioned in Section 151 of the Civil Procedure Code.

It is not in the interest of democratic system to keep pending such cases as one of Ayodhya dispute for many years. The decision taken relating to land distribution by Allahabad High Court will not in fact harm to rights of any of the litigant in the said dispute. We all must understand that dispute like this, can be decided amicably or in the Court like the way the Allahabad High Court did. How-much piece of land should be given to whom, shall be issue on which various people will be having difference of opinion, which can be understandable.

The Supreme Court should give a liberal interpretation to section 151 of the civil procedure while deciding on the powers of the High Court. Because the Ayodhya dispute definitely is not only a civil suit, it has become an issue related to social justice also. Common people expect to put an end to this as soon as possible.

There are various issues related to crises of right to live, getting proper medical treatment, insufficient food distribution, issues related to poverty and development, many of the communities and group of people are still away from the paths of democracy and are claiming innocent lives, issues related to women and children etc., which should be focused on rather than dead issues like Babari Masjid - Ram Janama Bhumi. The people, who feel happy in devoting their time in prayers or for Namaj, let them spend their time in doing so. Let some pieces of land

given to them as immediately as possible because it will not be harmful for the Nation. In fact that will be very useful to decide this dispute which is causing dent to the development and irreparable loss to the harmony and secular structure in the society. The nation witnessed the belief beating law and same judgment has been given on the basis of long standing belief and practice of common people. This was the strong ground to grant stay but it has not been granted on this ground and presently on the basis of reason that no parties to the suit had ever demanded for partition of land and there was no prayer to this effect, then it was not proper for the High Court of Allahabad to distribute land amongst all the parties to the suit. This reasoning given by the Supreme Court will definitely give rise to the mechanical and technical process of law as it has discarded rights of the Judicial Officers to reach to the best possible judgment and decide the long pending case before them.

The Supreme Court must create some space regarding the judicial process so that issues like 'no specific prayer made' shall not come in way of dispensing justice. Clear mandate may be created to cut short the hyper technical approach while dealing the long pending cases. If and when it becomes necessary for the judges to use the inherent powers mentioned in S.151 to meet the ends of justice they shall be allowed to apply their judicious mind and with reasoning pass balanced order. Considering the larger social, economical political and religious good of maximum people, we must expect that the Ayodhya dispute shall be decided very swiftly as it is the issue related with collective social and civil rights also.

Adv. Asim Sarode

The writer is the human right activist lawyer and is the Ashoka Fellow.

asim.human@gmail.com

09850821117

Flat no. 1 Prathamesh CHS, Lane no. 5 Prabhat Road, Pune-411004

Maharashtra