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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL Nos.4768-4771 OF 2011

IN THE MATTER OF:

Bhagwan Sri Ram Virajman Rep.By Next
Friend Trilokinath Pandey and others ... Appellants

-Versus-

Rajendra Singh & others ... Respondents

COMPILATION

SUBMISSIONS ON LAND AS A JURISTIC ENTITY ON BEHALF OF SRI K. PARASARAN, SENIOR ADVOCATE

(PAPER BOOK)

(KINDLY SEE INDEX INSIDE)

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MR. P. V. YOGESWARAN

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A. INTRODUCTION

1. It is respectfully submitted that some of the factors which may be required to be borne in mind, while dealing with the concept of land being recognised as a juristic person, are:

   a. The concept conferring juristic personality has to be seen from the point of view of Hindu law. It is unnecessary to turn to Roman Law or English Law for this. This Hon'ble Court has observed in ***Kesavananda Bharati v. State of Kerala*** (1973) 4 SCC 225 @ 614, para 1107 (in the judgment of Jaganmohan Reddy J.):

> *"The seed of the Constitution is sown in a particular soil and it is the nature and the quality of the soil and the climatic conditions prevalent there which will, ensure its growth and determine the benefits which it confers on its people. We cannot plant the same seed in a different climate and in a different soil and expect the same growth and the same benefit therefrom. Law varies according to the requirements of time and place. Justice thus becomes a relative concept varying from society to society according to the social milieu and economic conditions prevailing therein. The difficulty, to my mind, which foreign cases or even cases decided within the Commonwealth where the Common Law forms the basis of the legal structure of that unit, just as it is to a large extent the basis in this country, is that they are more often than not concerned with expounding and interpreting provisions of law which are not in pari materia with those we are called upon to consider. <u>The problems which confront those Courts in the background of the State of the society, the social and economic set-up, the requirements of a people with a totally different ethics, philosophy, temperament and outlook differentiate them from the problems and outlook which confront the courts in this country.</u> It is not a case of shutting out light where that could profitably enlighten and benefit us. The concern is rather to safeguard against the possibility of being blinded by it."* [Emphasis Supplied]

b. The Hindu notion in this regard is the determining consideration. The following observations of the Bombay High Court in ***Jamnabai* v. *Khimji Vullubdass***, ILR (1890) 14 Bom 1, which have been quoted with approval by this Hon'ble Court in ***Kamaraju Venkata Krishna Rao v. Sub Collector***, (1969) 1 SCR 624 @ 627-628 (placetum 'H'), are relevant:

> *"In Jamnabai v. Khimji Vullubdass ILR (1890) 14 Bom 1, Sir Charles Sargent Kt., C.J., while interpreting a will observed thus:*
>
> > *"We come to the latter part of clause 6, which directs the building of a well and 'avada', (cistern for animals to drink water from), out of the surplus of his fund after providing for the outlay of the two sadavarats and repairing his property. Mr Justice Jardine considered he could not presume a charitable object in a well and 'avada'. Such an object is so frequently the result of charitable intention in Oriental countries, and is so entirely in accordance with the notions of the people of this country that we think that, in the absence of anything to show that the testator intended the well and 'avada' to be built for the benefit of the property-and there is nothing in the present will to show such intention—they should be presumed to have intended by the testator for the use of the public.""* [Emphasis Supplied]

See also, the judgment of this Hon'ble Court in ***Saraswathi Ammal v. Rajagopal Ammal***, 1954 SCR 277 @ 285-286:

> *"The following passage in Mayne's Hindu Law, 11th Edn., at page 192, is relied on to show that.*
>
> > *"What are purely religious purposes and what religious purposes will be charitable must be entirely decided according to Hindu law and Hindu notions."*
>
> *... Now, it is correct to say that what is a religious purpose under the Hindu law must be determined according to Hindu notions. This has been recognised by courts from very early times. (Vide Fatma Bibi v. The Advocate General of Bombay [ILR 6 Bom 42]). It cannot also be disputed that under the Hindu law religious or charitable purposes are not confined to purposes which are productive of actual or assumed*

public benefit. The acquisition of religious merit is also an important criterion. ... So far as the textual Hindu law is concerned what acts conduce to religious merit and justify a perpetual dedication of property therefor is fairly definite." [Emphasis Supplied]

c. India is a pluralistic society and as such, no precise definition of universal application as to what is religion and what are matters of religious belief or religious practice can be made. In ***A.S. Narayana Deekshitulu v. State of A.P.***, (1996) 9 SCC 548 at page 593, the observations of this Hon'ble Court in the context of a pluralistic society are also apposite and reads as under:

> *"87. In pluralistic society like India, as stated earlier, there are numerous religious groups who practise diverse forms of worship or practise religions, rituals, rites etc.; even among Hindus, different denominants and sects residing within the country or abroad profess different religious faiths, beliefs, practices. They seek to identify religion with what may in substance be mere facets of religion. It would, therefore, be difficult to devise a definition of religion which would be regarded as applicable to all religions or matters of religious practices. To one class of persons a mere dogma or precept or a doctrine may be predominant in the matter of religion; to others, rituals or ceremonies may be predominant facets of religion; and to yet another class of persons a code of conduct or a mode of life may constitute religion. Even to different persons professing the same religious faith some of the facets of religion may have varying significance. It may not be possible, therefore, to devise a precise definition of universal application as to what is religion and what are matters of religious belief or religious practice. ... Though religious practices and performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in a particular doctrine, that by itself is not conclusive or decisive. What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence — factual or legislative or historic — presented in that context is required to be considered and a decision reached."* [Emphasis supplied]

d. Hindu law has grown and evolved by way of judicial interpretation from instance to instance. This Hon'ble Court in ***State of West Bengal v. Anwar Ali Sarkar*** 1952 SCR 284 @ 363 (see the judgement of Vivian Bose, J.), has observed as under:

> *"... Much of the existing Hindu law has grown up in that way from instance to instance, the threads being gathered now from the rishis, now from custom, now from tradition. In the same way, the laws of liberty, of freedom and of protection under the Constitution will also slowly assume recognizable shape as decision is added to decision. They cannot, in my judgment, be enunciated in static from by hide-bound rules and arbitrary applied standards or tests."* [Emphasis Supplied]

See also, the judgment of this Hon'ble Court in ***Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P.***, (1997) 4 SCC 606 at page 631 @ para 29:

> *"29. Justice B.K. Mukherjea in his Tagore Law Lectures on Hindu Law of Religious and Charitable Trust at p. 1 observed:*
>
> > *"The popular Hindu religion of modern times is not the same as the religion of the Vedas though the latter are still held to be the ultimate source and authority of all that is held sacred by the Hindus. In course of its development the Hindu religion did undergo several changes, which reacted on the social system and introduced corresponding changes in the social and religious institution. But whatever changes were brought about by time — and it cannot be disputed that they were sometimes of a revolutionary character — the fundamental moral and religious ideas of the Hindus which lie at the root of their religious and charitable institutions remained substantially the same; and the system that we see around us can be said to be an evolutionary product of the spirit and genius of the people passing through different phases of their cultural development.""* [Emphasis Supplied]

B. PLACES OF PUBLIC WORSHIP IN THE HINDU RELIGION ARE DIVERSE; WORSHIP MAY BE DONE AT SUCH PLACES WITH OR WITHOUT IMAGES / IDOLS.

2. In the Hindu religion, though the ultimate God is one Supreme being, He is worshipped in different forms in different modes in different temples.

a. In ***Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu v. Prathivathi Bhayankaram Venkatacharlu*** AIR 1947 PC 53 @ 54, the Privy Council has observed as under:

> *"According to the Hindu creed the Deity manifests Himself in three aspects as Brahma, the Creator, Vishnu, the Preserver, and Siva, the Destroyer and Renovator. Those who are devoted to the worship of the Deity in His aspect as Vishnu are known as Vaishnavas, and there are many temples, especially in Southern India, dedicated to the worship of Vishnu and known as Vaishnavite temples. ..."* [Emphasis Supplied]

b. In ***Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P.***, (1997) 4 SCC 606, this Hon'ble Court has observed (at page 361, para 30) as under:

> *"30. Hinduism cannot be defined in terms of Polytheism or Henotheism or Monotheism. The nature of Hindu religion ultimately is Monism/Advaita. This is in contradistinction to Monotheism which means only one God to the exclusion of all others. Polytheism is a belief of multiplicity of Gods. On the contrary, Monism is a spiritual belief of one Ultimate Supreme who manifests Himself as many. This multiplicity is not contrary to on-dualism* [*(sic)* non-dualism]. *This is the reason why Hindus start adoring any deity either handed down by tradition or brought by a Guru or Swambhuru and seek to attain the Ultimate Supreme."* [Emphasis Supplied]

c. In ***Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya***, (1966) 3 SCR 242, the diverse and versatile nature of the Hindu religion, including the

methods of worship and notions, has been taken note of by this Hon'ble Court in the following manner (at page 260):

> *"When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more."*

This Hon'ble Court further observed (at page 262):

> *"33. The monistic idealism which can be said to be the general distinguishing feature of Hindu Philosophy has been expressed in four different forms: (1) Non-dualism or Advitism; (2) Pure monism: (3) Modified monism; and (4) Implicit monism. It is remarkable that these different forms of monistic idealism purport to derive support from the same vedic and Upanishadic texts. ... Naturally enough, it was realised by Hindu religion from the very beginning of its career that truth was many sided and different views contained different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponents point of view. That is how the several views set forth in India in regard to the vital philosophic concepts are considered to be the branches of the self-same tree. ... When we consider this broad sweep of the Hindu philosophic concepts, it would be realised that under Hindu philosophy, there is no scope for ex-communicating any notion or principle as heretical and rejecting it as such."*

This Hon'ble Court further observed (at pages 263-264),

> *"Do the Hindus worship at their temples the same set or number of gods? That is another question which can be asked in this connection; and the answer to this question again has to be in the negative. Indeed, there are certain sections of the Hindu community which do not believe in the worship of idols; and as regards those sections of the Hindu community which believe in the worship of idols, their idols differ from community to community and it cannot be said that one definite idol or a*

definite number of idols are worshipped by all the Hindus in general. In the Hindu Pantheon the first gods that were worshipped in Vedic times were mainly Indra, Varuna, Vayu and Agni. Later, Brahma, Vishnu and Mahesh came to be worshipped. In course of time, Rama and Krishna secured a place of pride in the Hindu Pantheon, and gradually as different philosophic concepts held sway in different sects and in different sections of the Hindu community, a large number of gods were added, with the result that today, the Hindu Pantheon presents the spectacle of a very large number of gods who are worshipped by different sections of the Hindus." [Emphasis Supplied]

3. It may be noted that the above judgment in ***Sastri Yagnapurushdasji*** was mentioned in an article authored by Dr. Duncan Derrett, Professor of Oriental Laws, Oxford University. In his article, reported in (1966) 2 MLJ 47-54 (Journal Section), Dr. Derrett outlined the special features of the judgment as under:

(i) It relies on no judicial authority;

(ii) It relies on a legislative precedent (the Hindu code) but only in a glancing or indirect manner;

(iii) It relies on established authorities who discuss the Hindu religion, but discuss it in a particular modern and enlightened manner;

(iv) It relies also on the text of the Bhagavadagita, thus for the first time (?) making this a judicially recognised authority;

(v) It relies on a view of the purpose and spirit of the Constitution with reference to religion which is not by any means original, but which deserved to be stated in this connection.

It is submitted that the Bhagavada Gita has been cited as an authority by this Hon'ble Court in two other decisions; see ***Kiran Bedi v. Committee of Inquiry,***

(1989) 1 SCC 494 @ 514, para 22, and ***Spencer & Co. Ltd. v. Vishwadarshan Distributors (P) Ltd.***, (1995) 1 SCC 259 @ 263, para 7.

4. Owing to the multiplicity of the gods that are worshipped in different forms and in different modes, places of public worship are also of various kinds.

   a. As noted by Viswanatha Sastri J. (forming part of the majority) in ***T.R.K. Ramaswami Servai v. Board of Commissioners*** AIR 1951 Mad 473 @ 489:

> *"43. It is common knowledge that there are in this Presidency many institutions of a mixed character, whose exact place among religious and charitable foundations is likely to be a matter of doubt or dispute. There are some samadhis or tombs and sepulchres of holy men, where an image of Siva is usually installed and worship, regular or occasional, is offered. Some of them have come to be considered as public temples by reason of the sanctity of the persons interred. There are private mausoleums where idols are installed and pooja offered, but which are not temples or temples as defined in the Act, because the public either do not care or are not allowed to worship at such places; Draiviasundaram v. Subramania, I.L.R. (1945) Mad. 854 : (A.I.R. (32) 1945 Mad. 217), Velusami Goundan v. Dandapani, (A.I.R. (33) 1946 Mad. 485). There having been cases where memorials erected originally in honour of heroes or martyrs have developed into places of public worship and have been declared to be public temples; Board of Commissioners for H.R.E. Madras v. Narasimham, (A.I.R. (26) 1939 Mad. 134). There are institutions like Bhajana matams where pictures or idols of God of the Hindu pantheon are kept, the public congregate daily or on stated occasions, sing the praise of God and receive prasadams. There are institutions loosely called mutts which, however, are private buildings in which house holders, belonging to particular sects or following particular tenets, live with their families. A so-called mutt may merely be the residence of a sanyasi or paradesi. There are also endowed mutts which are public institutions established for propagating particular systems of religious philosophy, presided over by an ascetic head. There are chaultries resorted to by the public, where images of Gods are installed and daily worship offered. There are also endowments of immovable property and cash for institutions of the foregoing types. There are foundations, of which it is difficult to say*

whether they are temples or mutts at all and whether they are temples or mutts as defined in the Act. …"

Govinda Menon J. (also forming part of the majority) has noted, in his judgment at page 482, as under:

"The definition connotes two distinct matters. There should be firstly a place of public religious worship and secondly dedication or user by the Hindu community or any section thereof. It is unnecessary that a building should be in existence: for, it is a matter of common knowledge that in many places in South India there are idols being worshipped without a roofing to cover the idol. One is aware of idols in forests or under trees without any roofing." [Emphasis Supplied]

Though the above decision was dealing with the definition of 'temple' under a statute, the basic principle of 'notions' as to Avada and the concept of places of public worship is inbuilt in statutory definitions, which will nonetheless apply even when there is no statutory definition.

b. In ***Ram Jankijee Deities v. State of Bihar***, (1999) 5 SCC 50 @ 57, this Hon'ble Court has observed as under:

"13. Divergent are the views on the theme of images or idols in Hindu law. One school propagates God having swayambhu images or consecrated images; the other school lays down God as omnipotent and omniscient and the people only worship the eternal spirit of the deity and it is only the manifestation or the presence of the deity by reason of the charm of the mantras.

14. Images according to Hindu authorities are of two kinds: the first is known as swayambhu or self-existent or self-revealed, while the other is pratisthita or established. The Padma Purana says: "The image of Hari (God) prepared of stone, earth, wood, metal or the like and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established images … where the self-possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled the self-revealed." (B.K. Mukherjea — Hindu Law of Religious

> *and Charitable Trusts, 5th Edn.) A swayambhu or self-revealed image is a product of nature and it is anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or pratistha but a man-made image requires consecration. This man-made image may be painted on a wall or canvas. The Salgram Shila depicts Narayana being the Lord of the Lords and represents Vishnu Bhagwan. It is a shila — the shalagram form partaking the form of Lord of the Lords, Narayana and Vishnu."* [Emphasis Supplied]

5. Thus, there are various kinds of places of worship, with or without images / idols. It is not possible to put the concept of a Hindu temple or a Hindu idol in a strait-jacket. The commonality however is that the purpose remains the same i.e. to offer worship to a deity / divinity. What differs is the mode and manner of worship, depending on the form of the deity / divinity.

C. WHERE IDOL / IMAGE (WHETHER CONSECRATED OR SWAYAMBHU) WORSHIP IS DONE, THE IDOL / IMAGE HAS THE STATUS OF A JURISTIC ENTITY. WHERE THERE IS NO VISIBLE IDOL / IMAGE, THE INSTITUTION ITSELF HAS TO BE CONSIDERED THE JURISTIC ENTITY, FOR IT CANNOT BE LEFT UNPROTECTED.

6. Hindus do not worship the material body of the idol, made of clay or gold or any other substance. They worship the eternal spirit of the deity or certain attributes thereof in a suggestive form which is used for the convenience as a mere symbol or emblem. It is the incantation of the mantras, peculiar to a particular deity, that causes the manifestation or presence of the deity. God is formless and shapeless;

God is "Anoraniyan mahato mahiyan" i.e. smaller than the smallest, and bigger than the biggest. See Katha Upanishad (Stanza 20 at page 79):

अणोरणीयान्महतो महीया-
नात्माऽस्य जन्तोर्निहितो गुहायाम्।
तमक्रतुः पश्यति वीतशोको
धातुप्रसादान्महिमानमात्मन

It is difficult to conceive of 'God' in this manner; only gnyanis can perceive God of that nature in the absence of any form or idol. For ordinary worshippers, in order to be able to conceive of the idea of 'God' and concentrate on the deity while offering worship, an idol or image is consecrated and installed in the temple.

7. Where an idol or image is consecrated and installed in the temple, it represents the physical manifestation of the deity sought to be worshipped. Such an idol or image comes to be recognized as the juristic entity, capable of holding property endowed / dedicated to the deity. However, the object of worship is not the idol itself, but God / deity / divinity which is believed to manifest in such idol. See the decision of the Madras High Court in ***M.L. Hanumantha Rao v. Sri Sai Baba*** (1980) 93 LW 328, wherein the issue was whether the idol of Sri Sai Baba could be treated as a deity. After examining the judgments of the High Courts and this Hon'ble Court, the Madras High Court observed, at page 336, as under:

> *"The legal position, therefore, appears to be this. Normally the images worshipped by the Hindus are Visible symbols representing some form of the three-fold attributes of God based upon the Hindu idea of Trinity, namely, creator, preserver and destroyer. <u>The object of worship is not the image but the God believed to be manifest in the image for the benefit of the worshippers who cannot conceive or think of the deity</u>*

without the aid of perceptible form on which they may fix their minds and concentrate attention for the purpose of meditation. According to the Hindu notion the image itself is not the God but it [is] *the visible personified deity manifesting itself to the devotees by means of the image. Where a Hindu dedicates property for the worship of a God by means of an image, the property is, by a legal fiction, deemed to be vested in a juristic or juridical person, and the God which is believed to be manifest in the image is to be deemed the fictional person holding property. Material image is merely a means of worship of God and the consecrated image is the body of which the invisible spirit is the soul."* [Emphasis Supplied]

8. In the judgment of ***Yogendra Nath Naskar v. CIT*** (1969) 1 SCC 555 @ 557, para 5, the following passage from the judgment of the Madras High Court in ***Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami*** (1904) I.L.R. 27 Mad 435 is quoted with approval:

> *"It is to give due effect to such a sentiment, widespread and deep-rooted as it has always been, with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned the creation of a fictitious person in the matter, as is implied in the felicitous observation made in the work already cited "perhaps the oldest of all juristic persons is the God, hero or the saint. (Pollock and Maitland' History of English Law Volume I P. 481)."* [Emphasis Supplied]

This Hon'ble Court further observes, at page 558, as under:

> *"It should however be remembered that the juristic person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the Pran Pratishta ceremony. ..."*[Emphasis Supplied]

This Hon'ble Court further observes, at page 560, as under:

> *"Sankara, the great philosopher, refers to the one Reality, who, owing to the diversity of intellects (Matibheda) is conventionally spoken of (Parikalpya) in various ways as Brahma, Visnu and Mahesvara. It is, however, possible that the founder of the endowment or the worshipper*

may not conceive on this highest spiritual plane but hold that the idol is the very embodiment of a personal God, but that is not a matter with which the law is concerned. Neither God nor any supernatural being could be a person in law. But so far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person. The true legal view is that in that capacity alone the dedicated property vests in it." [Emphasis Supplied]

9. It is the incantation of the mantras peculiar to a particular God that causes the manifestation or presence of the deity. In ***Ram Jankijee Deities*** (supra), this Hon'ble Court has observed (at pages 59-60) as under:

17. One cardinal principle underlying idol worship ought to be borne in mind

"that whichever God the devotee might choose for purposes of worship and whatever image he might set up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different Gods. Siva, Vishnu, Ganapati or Surya is extolled, each in its turn as the creator, preserver and supreme lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else".

(B.K. Mukherjea — Hindu Law of Religious and Charitable Trusts, 5th Edn.)

18. In this context reference may also be made to an earlier decision of the Calcutta High Court in the case of Bhupati Nath Smrititirtha v. Ram Lal Maitra [ILR (1909) 37 Cal 128] wherein Chatterjee, J. (at p. 167) observed:

"A Hindu does not worship the 'idol' or the material body made of clay or gold or other substance, as a mere glance at the mantras and prayers will show. They worship the eternal spirit of the deity or certain attributes of the same, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that

> *causes the manifestation or presence of the deity or, according to some, the gratification of the deity."*
>
> *19. God is omnipotent and omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent. It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in the images of the supreme being. ... A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human concept of a particular divine existence which gives it the shape, the size and the colour. ..."* [Emphasis Supplied]

10. In ***Bhupati Nath Smrititirtha v. Ram Lal Maitra*** ILR (1909) 37 Cal 128 (supra), Chatterjee J. also observes at page 166, that:

> *"it would seem absurd to say that a deity is not a sentient being. If the deity exists and it manifests itself in the image upon the invocation of the worshipper with certain mantras, it cannot be said to be an insentient being. If it answers to the* इहागच्छ इहतिष्ठ, *i.e., "come here", "stay here" of the votary, it cannot be said to be insentient. ... Shastri's Hindu Law, 3rd Ed., page 420, shows the Hindu idea of the forms attributed to God for the convenience of worship. A particular image may be insentient until consecrated, but the deity is not."*

11. As stated above, seen from Indian law perspective, the notion of treating an idol as a juristic person is rooted in the faith of the people – in the "widespread" and "deep-rooted" sentiment – that the God / deity / divinity has manifested itself in such an idol and is thus capable of holding movable and immoveable property dedicated to it, so as to create accountability to the worshippers and prevent swindling of donations. The worshipper is treated as a beneficiary. See ***Deoki Nandan v. Muralidhar*** 1956 SCR 756 @ 762 wherein it has been observed that *"... the true beneficiaries of religious endowments are not the idols but the worshippers ..."* and ***Bishwanath v. Shri Thakur Radhaballabhji*** (1967) 2 SCR

618 @ 619, 621-622 wherein it has been observed that *"... persons who go in only for the purpose of devotion have ... a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage. ..."*.

12. The following observations of the Bombay High Court in ***Manohar Ganesh Tambekar v. Lakhiram Govindram*** ILR (1888) 12 Bom 247 @ 263 to 265 are also relevant in this context, as to why juridical personality is ascribed to an object of worship:

> *11. The Hindu law, like the Roman law and those derived from it, recognizes, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations. A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow it, and the ruler will give effect to the bounty, or at least protect it so far, at any rate, as it is consistent with his own dharma or conceptions of morality. A trust is not required for this purpose: the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English law. In early times a gift placed; as it was expressed, "on the altar of God" sufficed to convey to the church the lands thus dedicated. Under the Roman law of pre-Christian ages such dedications were allowed only to specified national deities. They were thus placed extra commercium. After Christianity had become the religion of the empire, dedications to particular churches or for the foundation of churches and of religious and charitable institutions were much encouraged. <u>The officials of the church were empowered specially to watch over the administration of the funds and estates thus dedicated to pious uses, but the immediate beneficiary was conceived as a personified realization of the church hospital or fund for ransoming prisoners from captivity. Such a practical realism is not confined to the sphere of law; it is made use of even by merchants in their accounts, and by furnishing an ideal centre for an institution to which the necessary human attributes are ascribed</u>-Dhadphale v. Gurav I.L.R., 6 Bom., 122 it makes the application of the ordinary rules of law easy as in the case of an infant or a lunatic. <u>Property dedicated to a pious purpose is, by the Hindu as by the Roman law, placed extra</u>*

> *commercium with similar practical savings as to sales of superfluous articles for the payment of debts and plainly necessary purposes. Mr. Macpherson admitted for the defendants in this case that they could not sell the lands bestowed on the idol Shri Ranchhod Raiji. This restriction is like the one by which the Emperor forbade the alienation of dedicated lands under any circumstances. It is consistent with the grants having been made to the juridical person symbolized or personified in the idol at Dakor. It is not consistent with this juridical person's being conceived as a mere slave or property of the shevaks whose very title implies not ownership, but service of the god. It is indeed a strange, if not wilful, confusion of thought by which the defendants set up the Shri Ranchhod Raiji as a deity for the purpose of inviting gifts and vouchsafing blessings, but, as a mere block of stone, their property for the purpose of their appropriating every gift laid at its feet.. But if there is a juridical person, the ideal embodiment of a pious or benevolent idea as the centre of the foundation, this artificial subject of rights is as capable of taking offerings of cash and jewels as of land. Those who take physical possession of the one as of the other kind 6f property incur there by a responsibility for its due application to the purposes of the foundation- compare Griffin v. Griffin 1 Sch & Lef. 352; Mulhallen v. Marum 3 Dr. & War;, 317 Aberdeen Town Council v. Aberdeen University L.R. 2 Ap. Cas., 544. They are answerable as trustees even though they have not consciously accepted a trust, and a remedy may be sought against them for maladministration by a suit open to any one interested, as under the Roman system in a like case by means of a popularis actio."* [Emphasis Supplied]

13. Thus, while God / Deity Himself is not a person in law, whatever form He is believed to have manifested Himself in becomes a person in law.

14. However, consecration of an idol is not a requisite or an essential condition for a place to be considered as a temple. See in this regard, the following observations of this Hon'ble Court in ***Ram Jankijee Deities*** (supra), at pages 58-59, paras 15-16:

> *"15. It is further to be noticed that while usually an idol is consecrated in a temple, it does not appear to be an essential condition. In this*

context reference may also be made to a decision of the Andhra Pradesh High Court in the case of Addangi Nageswara Rao v. Sri Ankamma Devatha Temple [(1973) 1 AWR 379 (AP)] . The High Court in para 6 of the Report observed:

> *"6. The next question to be considered is whether there is a temple in existence. 'Temple' as defined means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of or used as of right by the Hindu community or any section thereof as a place of public religious worship. That is the definition by the legislature to the expression 'temple' in Act 2 of 1927, Act 19 of 1951 and Act 17 of 1966. Varadachariar, J., sitting with Pandrang Row, J., in Board of Commrs. for H.R.E. v. Pidugu Narasimham [(1939) 1 MLJ 134 : AIR 1939 Mad 134] construing the expression 'a place of public religious worship' observed:*
>
> > *'[T]he test is not whether it conforms to any particular school of Agama Shastras. The question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some superhuman power, it must be regarded as "religious worship".'*
>
> *To the same effect was the view expressed by Viswanatha Sastry, J., in T.R.K. Ramaswami Servai v. Board of Commrs. for the H.R.E. [ILR 1950 Mad 799] :*
>
> > *'The presence of an idol, though it is an invariable feature of Hindu temples, is not a legal requisite under the definition of a temple in Section 9(12) of the Act. If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and that by offering worship there they are likely to be the recipients of the blessings of God, then we have the essential features of a temple as defined in the Act.'*
>
> *A Division Bench of this Court consisting of Justice Satyanarayana Raju (as he then was) and Venkatesam, J., in Venkataramana Murthi v. Sri Rama Mandhiram [(1964) 2 An WR 457 (DB)] observed that the existence of an idol and a dhwajasthambham are not absolutely essential for making an*

> *institution a temple and so long as the test of public religious worship at that place is satisfied, it answers the definition of a temple.*
>
> *Their Lordships of the Supreme Court in Poohari Fakir Sadavarthy v. Commr., H.R. & C.E. [AIR 1963 SC 510 : 1962 Supp (2) SCR 276] held:*
>
> > *'A religious institution will be a temple if two conditions are satisfied. One is that it is a place of public religious worship and the other is that it is dedicated to, or is for the benefit of, or is used as of right by the Hindu community, or any section thereof, as a place of religious worship.'*
>
> *To constitute a temple it is enough if it is a place of public religious worship and if the people believe in its religious efficacy irrespective of the fact whether there is an idol or a structure or other paraphernalia. It is enough if the devotees or the pilgrims feel that there is some superhuman power which they should worship and invoke its blessings."*
>
> *16. The observations of the Division Bench has been in our view true to the Shastras and we do lend our concurrence to the same. If the people believe in the temples' religious efficacy no other requirement exists as regards other areas and the learned Judge it seems has completely overlooked this aspect of the Hindu Shastras — in any event, Hindus have in the Shastras "Agni" Devta, "Vayu" Devta — these deities are shapeless and formless but for every ritual Hindus offer their oblations before the deity. The ahuti to the deity is the ultimate — the learned Single Judge however was pleased not to put any reliance thereon. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrates the image."* [Emphasis Supplied]

15. In the case of a temple where no idol / image is consecrated, it does not cease to be a religious institution simply for that reason. The worshippers who treat such an institution with reverence and offer worship there cannot be treated differently from those who worship at a temple with an idol / image. Such worshippers are also, equally, beneficiaries. Their belief, reverence and devotion is equally real. Thus, their interests cannot be left unprotected merely because they do not offer

worship to an idol / image. In such a case, the institution itself has to be treated as a juristic person, and this will have to be examined on a case-by-case basis.

16. The deeming fiction to identify the deity as juristic person is to ensure that the rights of worshippers, as also the jurisdiction and rights of the deity, are protected. In the absence of a juristic person, where worship is offered to a formless deity, neither the deity's nor the worshipper's rights can be effectively protected.

17. This Hon'ble Court in ***Guruvayoor Devaswom Managing Committee v. C.K. Rajan***, (2003) 7 SCC 546 at page 566, para 40 has held that a Hindu Temple is a juristic person, while referring to the decision of the Bombay High Court in ***Manohar Ganesh Tambekar v. Lakhiram Govindram*** (supra). It is submitted that Sir Raymond West in ***Manohar Ganesh Tambekar's*** case (supra) has held as follows, at page 266:

> *"This principle is recognized in the law of England as it was in the Roman law, whence indeed it was derived by the modern codes of Europe. It is equally consistent with the Hindu law, which, as we have seen, undoubtedly recognizes artificial juridical persons such as the institution at Dakor, and could not, any more than any other law, support a foundation merely as a means of squandering in waste or profligacy the funds dedicated by the devout to pious uses."* [Emphasis Supplied]

18. One example of a temple where no idol / image is worshipped in the main shrine is the Chidambaram Temple. The following judgments of the Madras High Court are relevant in this regard:

    a. In ***Sri Sabhanayagar Temple, Chidambaram v. State of Tamil Nadu***, (2009) 4 CTC 801 @ 805-806, the Madras High Court has outlined 5

temples in India where Lord Siva is worshipped in 5 forms, each symbolising the 'pancha mahabhutas' (five great elements):

> *"2. 'Iswara' as Lord Siva is generally worshipped in a particular form known as 'Linga'. The Word 'Linga' in Sanskrit means a symbol. If all forms in the creation were put together that would form an indefinable form which is symbolised by 'Linga'.*
>
> *3. The vedas reduce all forms to five constituent elements called the "pancha mahabutas", viz., five great elements, they are "Akasa-Space; Vayu-Air; Agni-Fire; Apah-Water and prithivi-Earth". There are five temples in India where Lord Siva is invoked in each of the five elements. At Chidambaram temple, Lord Siva is worshipped as the element of space. At Kalahasdi temple, in Andhra Pradesh, sivalingam as well as a lamp with a constant flame implying the presence of air is worshipped as element of air. At Tiruvannamalai Arunachaleeswara temple, Lord Siva is worshipped as Agni, fire. At Jambukeswara temple located at Tiruvannaikaval, at Tiruchirappalli, Lord Siva is worshipped as the element of water. At Kancheepuram, sivalingam is made of earth and is worshipped as the element of earth."*

The High Court further notes, that:

> *"4. The Chidambaram Temple contains an altar which has no idol. In fact, no Lingam exists but a Curtain is hung before a wall, when people go to worship, the curtain is withdrawn to see the 'Lingam'. But the ardent devotee will feel the divinely wonder that Lord Siva is formless i.e., space which is known as "Akasa Lingam". Offerings are made before the curtain. This form of worshipping space is called the "Chidambara rahasyam", i.e., the secret of Chidambaram. The Chidambaram Temple is also famous for its deity, Lord Nataraja, the "dancing Siva". This temple was built with Granites in an area of about 40 acres. It has massive high walls with four towers (Rajagopurams) in all four directions. There is a pond called "Sivaganga Theertham" having measured about 175 × 100 feet. There are 108 Bharathanatya models (dance postures) from Natya Sasthra fixed in the Rajagopurams."* [Emphasis Supplied]

b. The Shirur Mutt case and the Chidambaram Temple case were taken up together by the Madras High Court in ***Shirur Mutt v. Commr, HR&CE*** AIR 1952 Mad 613. At page 644, para 162, the High Court observes as under:

> *"The temple at Chidambaram, Chit and Ambalam (the atmosphere of wisdom), is a public temple of great antiquity sacred to Saivites all over India. According to the South Arcot Manual of the year 1878, the area occupied by the temple is about 39 acres in the centre of the town. Of the five Lingams of Siva, corresponding to the panchabhuthas, earth, water, light, air, and akasa (ether), the Lingam in this temple is Akasa Lingam. In fact, no Lingam exists but a curtain is hung before a wall on which some Bhijaksharas were written and when people go to worship, the curtain is withdrawn to see the "Lingam". Offerings are made before the curtain. This is generally known as 'Chidambara Rahasyam' the secret of Chidambaram. ..."* [Emphasis Supplied]

It may be noted that an appeal was preferred before this Hon'ble Court only in Shirur Mutt's case; the Chidambaram case attained finality. This Hon'ble Court in ***Subramanian Swamy v. State of T.N.,*** (2014) 5 SCC 75 @ 96, para 49 held that the declaration that "Dikshitars are religious denomination or section thereof" is in fact a declaration of their status and is a judgment in rem.

19. Another instance of a place of public worship where there is no idol / image, is that of the 'Gnana Sabhai' at Vadalur, taken note of by the Madras High Court in ***Pichai v. Commr. HR&CE*** AIR 1971 Mad 405 @ 407, para 13 in the following manner:

> *"It is a well known fact that in South India, in a place called Vadalur, Sri Ramalingaswamigal otherwise called Vallaler had found an institution called Gnana Sabhai where no idol or no picture of any deity is kept. But a light is kept burning perpetually, indicating God as "jyothi or "light". Daily pooja is performed and the Hindu community*

congregate in large numbers and offer their prayers and worship in the said Sabhai. Thus, it has become a place of public religious worship."

20. Illustratively, Dr. Dhawan, Ld. Senior Advocate has given a list of temples in India with no idols. In addition to this, it is submitted that at Malappuram, Kerala there is a temple by the name of Sree Kadampuzha Bhagavathy Temple, where the 'presence of the Devi' is worshipped with the belief that the divine power is emanating from a pit in the ground. There is no idol of the Devi in the temple.

21. It cannot be said that the worshippers of the Akasa Lingam at the Chidambaram temple (where no Lingam physically exists but offerings are made to it nonetheless), or worshippers of the Gnana Sabhai (where only a light is kept burning perpetually) or worshippers of the Devi at Sree Kadampuzha Bhagavathy Temple (where only the 'divine presence' is worshipped) are not entitled to protection because no image / idol / tangible entity that may be treated as a juristic entity, exists.

22. Therefore, in the present case, if the land believed to be the birthplace of Lord Ram is treated reverentially by the Hindu public and they have sought to offer worship there as a consequence of 'such' belief (not merely because they have faith in Lord Ram as a deity), the land itself may be treated as a juristic entity alongside the idol that may be believed to manifest Lord Ram as a deity.

23. A deity which is worshipped in a place of public worship has to be protected for the purpose of enabling worshippers to have access and offer their worship. It has also to be protected with regard to rights and the discharge of its functions in the context of areas which are secular in character like properties endowed to

such God in such form or endowed in the name of the Temple. It will be anomalous and incongruous to hold that the manifestation of the spirit of God can only be in an idol, in human form, and not otherwise. This will defeat the very fundamental right of religious freedom viz. belief, faith and worship as guaranteed by Articles 25 and 26 of the Constitution.

24. The Janmasthan itself, being an object of worship by Hindus, is 'widely' believed to be a deity and offering worship to the land constitutes the religious practice of a substantial and large class of persons who visit Ayodhya to worship Lord Ram. There is, thus, sufficient religious merit to treat the Janmasthan as a juristic entity on the basis of the belief that it is a manifestation of Lord Ram and hence sacred. See in this regard, ***Saraswathi Ammal v. Rajagopal Ammal***, 1954 SCR 277 @ 286-287:

> *"what conduces to religious merit in Hindu law is primarily a matter of Shastraic injunction. ... To the extent, therefore, that any purpose is claimed to be a valid one for perpetual dedication on the ground of religious merit though lacking in public benefit, it must be shown to have a Shastraic basis so far as Hindus are concerned. No doubt since then other religious practices and beliefs may have grown up and obtained recognition from certain classes, as constituting purposes conducive to religious merit. If such beliefs are to be accepted by courts as being sufficient for valid perpetual dedication of property therefor without the element of actual or presumed public benefit it must at least be shown that they have obtained wide recognition and constitute the religious practice of a substantial and large class of persons. ..."*

25. Land itself has been elevated to the status of a juristic entity in other instances of charitable endowments. See ***Kamaraju Venkata Krishna Rao v. Sub Collector*** (1969) 1 SCR 624 @ 628-629 and ***Thayarammal v. Kanakammal*** (2005) 1 SCC 457 @ 463, wherein it has been observed as under:

> *"A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no administrator or manager becomes res nullius which the learned author in the book (supra) explains as property belonging to nobody. Such a property dedicated for general public use is itself raised to the category of a juristic person. ... The religious institutions like mutts and other establishments obviously answer to the description of foundations in Roman law. The idea is the same, namely, when property is dedicated for a particular purpose, the property itself upon which the purpose is impressed, is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created. ..."* [Emphasis Supplied]

26. In the present case, the Janmasthan being swayambhu, is not capable of being endowed. But if the property endowed for a religious and charitable purpose can be elevated to the status of a juristic entity, *a fortiori* property considered to be and worshipped as a deity has to be considered to be a juristic person/entity. It continues to exist in perpetuity notwithstanding any adverse rights claimed by anybody else who do not consider such land as a deity. Since the deity itself is immortal, its manifestation is also immortal. It is respectfully submitted that this Hon'ble Court in ***Thakurji Shri Govind Deoji Maharaj v. Board of Revenue, Rajasthan*** (1965) 1 SCR 96 @ 100 has observed that:

> *"It is obvious that in the case of a grant to the Idol or temple as such there would be no question about the death of the grantee and, therefore, no question about its successor. An Idol which a juridical person is not subject to death, because the Hindu concept is that the Idol lives forever, and so, it is plainly impossible to predicate about the Idol which is the grantee in the present case that it has died at a certain time and the claims of a successor fall to be determined."* [Emphasis Supplied]

[It is respectfully submitted that it is inappropriate to use the word 'death' for an idol. Since this Hon'ble Court has used the same, it is being reproduced

hereinabove. God is 'Ananta' and 'Anadi' i.e. ever existing, eternal, with no beginning or end. See in this regard, Vaman Shivram Apte's Sanskrit – English Dictionary (reprint of the 2nd revised and enlarged edition of 1912) @ pages 52 and 57.]

Further, in ***Mahant Ram Saroop Dasji v. S.P. Sahi*** (1959) Suppl. 2 SCR 583 @ 596, this Hon'ble Court has held that *"Even if the idol gets broken or is lost or stolen, another image may be consecrated and it cannot be said that the original object has ceased to exist."* See also, the judgment of Chatterjee J. in ***Bhupati Nath Smrititirtha v. Ram Lal Maitra*** ILR (1909) 37 Cal 128 @ 167, cited by this Hon'ble Court in ***Ram Jankijee Deities*** (supra), wherein he has observed that *"If the image is broken or lost, another may be substituted in its place and, when so substituted, it is not a new personality, but the same deity …"*

27. The contention that the Court cannot create a third category of deity is inappropriate. It is submitted that the faith of the Hindus is that the spirit of Lord Ram has always existed at the place of his birth i.e. the 'Janmasthan'; that this spirit has existed before any structure or the masjid was put up; that the Janmasthan will continue to be place where Lord Ram was born. Thus, construction of a mosque atop it will not detract from its character as a juristic entity. Originally, worship at Ram Janmabhoomi was without an idol. In the course of time, an idol was installed. This cannot detract from the place being worshipped as Janmasthan.

28. It is contended on behalf of the plaintiff in Suit No.4 that till the Buddhist period, only the formless God was worshipped, and that idol worship started only after the Buddhist period. Having accepted that Hindus worshipped a formless deity till some point, if Hindus continued to worship the formless deity in the manner in that manner at the Janmasthan, necessarily the Janmasthan has to be the juristic person.

29. Two juristic entities can coexist in the same precincts – one in the form of the idol and the other in the form of the janmabhoomi. This Hon'ble Court has explicitly clarified this position in ***Shiromani Gurdwara Prabandhak Committee v. Som Nath Dass***, (2000) 4 SCC 146 at page 165, para 37, in the following manner:

> *"37. The further difficulty, the learned Judges of the High Court felt, was that there could not be two "juristic persons" in the same building. This they considered would lead to two juristic persons in one place viz., "gurdwara" and "Guru Granth Sahib". This again, in our opinion, is a misconceived notion. They are no two "juristic persons" at all. In fact both are so interwoven that they cannot be separated as pointed by Tiwana, J. in his separate judgment. The installation of "Guru Granth Sahib" is the nucleus or nectar of any gurdwara. If there is no Guru Granth Sahib in a gurdwara it cannot be termed as a gurdwara. When one refers a building to be a gurdwara, he refers to it so only because Guru Granth Sahib is installed therein. Even if one holds a gurdwara to be a juristic person, it is because it holds the "Guru Granth Sahib". So, there do not exist two separate juristic persons, they are one integrated whole. Even otherwise in Ram Jankijee Deities v. State of Bihar [(1999) 5 SCC 50] this Court while considering two separate deities, of Ram Jankijee and Thakur Raja they were held to be separate "juristic persons". So, in the same precincts, as a matter of law, existence of two separate juristic persons was held to be valid."* [Emphasis Supplied]

The best example of this is the 'Moolavar' (i.e. fixed) idol and the Utsavar (i.e. the savaari moorti who moves from time to time).

D. THE FORM OF THE DEITY IS IMPORTANT; ASTHAN RAM JANMABHOOMI IS A 'SWAYAMBHU' DEITY.

30. There are many temples dedicated to the worship of Lord Ram across the country; those temples may house consecrated idols or images of Lord Ram (eg, Ram Janakijee Deities case). However, when devotees offer worship at Ram Janmabhoomi Ayodhya, it is not ONLY to the idol. It is also to the "land" which is believed to be a manifestation of Lord Ram because He chose it as his birthplace. See the Relevant Extract from Srimad Valmiki Ramayana – Part I, Balakanda, page 48.

31. Faith and belief are internal, while expression and worship are external manifestations thereof. See in this regard ***Shirur Mutt***, 1954 SCR 1005 @ 1021.

32. In the context of the Hindu religion, the form of the deity is of paramount importance. See in this regard:

- ***Shirur Mutt***, 1954 SCR 1005 @ 1023, wherein the definition of religion from an American case has been reproduced viz. *"the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence <u>for His Being and character and of obedience to His Will.</u>"* Though this Hon'ble Court observes that this definition is not precise or adequate, it nevertheless goes to show that among other things, the "character" of the deity is important.

- ***Venkataramana Devaru v. State of Mysore***, 1958 SCR 895 @ 909 wherein it has been observed that *"The Gods have distinct forms ascribed to them and their worship at home and in temples is ordained as certain means of attaining salvation."*
- ***Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*** (1964) 1 SCR 561 @ 582 wherein emphasis is laid on the mode of worship adopted when Lord Krishna as a child is the main object of worship. See also @ 583 wherein it is observed that *"believing in the paramount importance and efficacy of Bhakti, the followers of Vallabha attend the worship and services of the Nidhi Swaroops or idols from day-to-day in the belief that such devotional conduct would ultimately lead to their salvation."*

33. The word 'swayambhu' or 'swayambhuva' means self-existent or, of Vishnu, of Siva, of Kala (or time personified) or, of the Supreme Being. See Vaman Shivram Apte's Sanskrit – English Dictionary (reprint of the 2nd revised and enlarged edition of 1912) @ page 1018. Thus, where Lord Vishnu (of whom Lord Ram is an avatar) or Lord Siva or the Supreme Being are believed to spontaneously manifest themselves into an object (without consecration or installation) which comes to be widely worshipped by the public, that object is treated as a swayambhu deity. In this case, it is the janmabhoomi land itself.

34. As to the significance of 'sthala' or 'place' under Hindu Law, see 'The Law Relating to Hindu and Mahomedan Endowments', Second Edition, by P.R. Ganapathi Iyer at pages 206-211. As to the significance of 'kshetra', see 'The Hindu Temple' (Volume 1), by Stella Kramrisch, at pages 3-7.

35. One of the earliest cases to mention 'swayambhu', wherein the deity by the name of 'Lingaraj Mahaprabhu' at Bhubaneshwar was held to be swayambhu, is ***Sapneshwar Pujapanda v. Ratnakar Mahapatra*** AIR 1916 Pat 146. The Patna High Court observed (at page 147) that:

> *"The Swayambhu Siva is the Siva who is self-existent, whose origin cannot be traced, who is unborn and eternal." It was further observed (at page 148) that, "I do not believe that Swayambhu is synonymous with avatar. I prefer the interpretation that Swayambhu, which means self-existing, is capable of application to a Siva, the origin of which is lost in antiquity, in contradistinction to a linga which was established by some known person."*

36. In ***Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P.***, (1997) 4 SCC 606 @ 614, para 1, this Hon'ble Court has observed that:

> *"The idol of Lord Shiva at Varanasi on the bank of holy River Ganges is one of the five Jyotirlingas in India believed to be <u>self-incarnated (swayam bhuva)</u>; other four, viz., (1) Rameshwaram in Tamil Nadu State; (2) Srisailam on the banks of River Krishna in Andhra Pradesh; (3) Dwarka in Gujarat State; and (4) Onkar in Madhya Pradesh on the bank of River Narmada, are believed to be Jyotirlingas according to Hindu mythology."* [Emphasis Supplied]

37. The decision of this Hon'ble Court in ***Ram Jankijee Deities*** (supra) also substantially explains the meaning of 'Swayambhu'.

38. A consecrated idol is not the only form in which the deity is believed to manifest itself. The deity may be believed to manifest himself in any form – physical or perceived. Such form need not necessarily only be a movable object, for there is no condition to limit his/her manifestation to movable objects alone. The deity may also be believed to manifest itself in an immovable object, which, in this case, is believed to be the birthplace of Lord Ram. An idol or object in a movable

form may be 'swayambhu' and natural formations or land in immoveable form may also equally be 'swayambhu.' Such manifestation in immoveable form is not 'owned' by, or does not 'belong to' any person, just as the manifestation in any movable form is not owned by or does not belong to any person.

39. The concepts of ownership, possession, limitation, etc. will apply to immoveable property if it is treated as 'property.' Only property is capable of being owned, partitioned, alienated, possessed, etc. In the present case, there is no 'owner' and no 'ownee' insofar as the janmasthan is concerned. An idol is not 'owned' by anyone, nor do the believers view it as the material it is made from. Whether clay, bronze, gold or silver, the believers only see the idol as the manifestation of the deity. Similarly, for the believers, the janmasthan is not merely 'land' or 'property' but is elevated to the status of a 'deity' on the basis of the belief that the spirit of Lord Ram is manifested therein.

40. It may be noted here, that the relief sought for in the plaint filed in 1989 (Suit-5) is for *"a declaration that the entire premises of Sri Ram Janma Bhumi at Ayodhya, as described and delineated in Annexures I, II and III belong to the plaintiff deities."* Annexures I, II and III have been described at para 2 of the plaint as "two site plans of the building premises and of the adjacent area known as Sri Rama Janma Bhumi, prepared by Shiv Shankar Lal pleader … along with his Report dated 25.05.1950, are being annexed to this plaint and made part of it as Annexures I, II and III, respectively." The said Annexures may be found at pages 2885, 2887 and 4218 of Volume 3 of the judgment, respectively. On the issue whether the property in question in Suit-5 was properly identified and

described in the plaint, Justice Agarwal (at para 4458 at pg. 2837) and Justice Sharma (at pg. 3533) have answered the issue in the affirmative.

41. Only after the judgment of this Hon'ble Court in ***Ismail Faruqui v. Union of India*** (1994) 6 SCC 360, the scope of the dispute was limited to the area comprising the inner and outer courtyard alone (referable to Annexure I) and the High Court proceeded to adjudicate the revived suits accordingly. See the observations of Hon'ble Justice Khan at page 55, Volume 1. See also, the following observations of Hon'ble Justice Agarwal at page 1553, para 2716:

> *"2716. We may point out that earlier when the suit was filed it was in respect to a much wider area which included not only the place which we have held as deity, but also appurtenant land which was claimed by the deity as property belong to it. But now the matter is confined only to the place which is being claimed by Hindus that according to their belief and faith, it is most revered, sacred and pious place being birthplace of Lord Rama over which they have been visiting since time immemorial, offering their worship continuously despite change of structure or no structure, as the case may, over the said land. …"*

42. Therefore, there is no anomaly insofar as the prayer in Suit-5 is concerned, i.e. a declaration that the entire premises (referable to Annexures I and II) 'belong to' the plaintiff deities. The janmasthan itself (delineated in Annexure I), being a deity and a juristic person, is capable of holding properties (delineated in Annexure II) in the same manner that any other juristic person is capable of holding properties. However, once the scope of the dispute is narrowed down consequent to the judgment of this Hon'ble Court in Ismail Faruqui, the prayer in Suit-5 to be read in the same light.

E. IDENTIFYING THE JURISTIC ENTITY 'JANMASTHAN'

43. In the present case, there is no challenge as to the existence of the belief that the land believed to be the birthplace of Lord Ram is considered to be sacred by Hindus; the dispute is confined to the exact location of such birthplace, within the precincts of the alleged structure mosque.

44. How does one determine what are the dimensions of the swayambhu deity in the present case? The term 'birthplace' or 'janmasthan' is ordinarily relative. It can mean country, city or house. This Hon'ble Court, while applying principles of Hindu law to the present case, may interpret the term reasonably to mean the general area considered physically sacred by the Hindus. The cities of Ayodhya, Kashi, Mathura, etc. are considered holy, but worship is not offered to the city by a believer; rather, worship is offered at a well identified place generally considered to be of particular religious significance.

45. An identifier of the janmasthan land may be considered to be the 'parikrama'. A parikrama by itself may not create any entitlement to property, but it identifies the place considered to be of religious significance. The birthplace cannot be pedantically interpreted to be the 'exact' room of the birth, for that may well be subject to difference of opinion. It must be interpreted reasonably, on the facts of this case, to generally mean the place of birth, relative to the larger space (in this case, the city of Ayodhya) it is comprised in. It has to be seen is what the worshippers have generally considered to be the birthplace. When one visits a temple to offer worship, it is not merely the garbha-griha which comprises the temple. The area surrounding the garbha-griha is also part of the temple. When

one considers a dwelling place as their house, it does not mean only the living room / drawing room of the house, but comprises all such areas one dwells in. The term 'birthplace' has to be interpreted in a like manner.

46. It may also be noted that universal belief as to the precise or exact spot of birth is not a pre-requisite for determining whether the Janmasthan is the 'birthplace' of Lord Ram and a juristic entity. What has to be seen is whether Hindus generally have historically regarded and continue to regard the disputed area to be sacred. See in this regard, the observations of this Hon'ble Court in ***A.S. Narayana Deekshitulu*** (supra).

47. The Privy Council in ***Madura, Tirupparankundram v. Alikhan Saheb*** (1931) 34 LW 340 @ 341, noted that:

> *"The Tirupparankundram Temple is one of the famous rock temples of Southern India. It is situated at the base of a hill some 500 feet high; and is dedicated to Subramanya, the son of Siva. The inner shrine of the temple is hewn out of the hill and in it, carved in the rock itself, is the image of the deity. Around the base of the hill is a pilgrim's way, nearly two miles in extent. This is said to be essential to the worship of the devotees, who perform the ceremony of Pradakshinam by going round the image of the deity with the right shoulder continuously presented to him. As the image in the temple is an actual part of the hill, it is obvious that the performance of this rite necessitates the perambulation of the hill itself."* [Emphasis Supplied]

Therefore, where the image believed to be the manifestation of the deity is part of a larger natural formation viz. the hill (immoveable property), the entire hill becomes a part of the worship. So also, in the present case, where the manifestation of the deity is believed to be part of the land, then the land itself becomes a part of the worship.

48. The contention of the learned Senior Counsel for the Wakf Board, that the said judgment did not declare the whole Hill is the temple property, will have to be seen in the light of para 2 of the said judgment (at page 113 of the Compilation A81) which expressly states *"in the trial court, the temple who represented by its manager was the plaintiff. He claimed the whole Hill with exception of certain cultivated and assessed lands and the site of the Mosque as temple property"*. Therefore, the Privy Council had no occasion to go into the question whether the site of the Mosque was to be declared as temple property.

F. INSTANCES OF HOW FOREIGN JURISDICTIONS HAVE DEALT WITH TEMPLE DISPUTES.

49. The Court of Appeal, UK in ***Bumper Development Corp Ltd. v. Commr of Police*** (1991) 4 All ER 638 noted that under the law of Tamil Nadu, a 13th century temple that lay in ruins and unworshipped for a matter of centuries, was nonetheless, a legal person, and entitled to sue for the recovery of an idol of Siva Nataraja that had been excavated from its premises, stolen and sold to a corporation in Canada. The Court noted that a Sivalingam was found among the surviving ruins, and since the inception of the proceedings before the English courts, the Sivalingam had been reinstated as an object of religious worship at the site of the temple. The Court held that the temple had a better title to the idol than the corporation, even though it had purchased the same in good faith, and the idol was returned to the temple.

50. Subsequently, when Canada contacted India with regard to the claim of the corporation for compensation for the loss of the idol (since it was purchased in

good faith), India sought to have the English judgment recognized and enforced in Canada. The judgment of the Alberta Court of Queen's Bench reported in (1996) I.L.Pr. 78 (1995) was awarded to the ruined temple, and the Canadian court rejected the arguments of the corporation on the ground that no authority was cited as to why the judgment of the English court is bad or unenforceable.

51. In another case involving the 'Preah Vihear' Temple (also in ruins), the dispute between Cambodia and Thailand landed in the International Court of Justice, with Cambodia claiming sovereignty over the said temple and the surrounding area. The temple was situated on the border of Cambodia and Thailand. On 15.06.1962, the ICJ ruled in favour of Cambodia, primarily on the basis of a map showing the temple on the Cambodian side. The ICJ also held that Thailand must return any antiquities such as sculptures that it had removed from the temple, even though Thailand had argued that the temple was in actual possession of Thai authorities at all material times.